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ABSTRACT

Focusing on the Johnson O'Malley Act (JOM) and its relationship to subsequent laws, this report on the financing of Indian education in public schools examines the allocation and use of JOM funds for basic educational costs and for supplementary programs, as well as the mixes of local, state, and federal tax revenues available to school districts with Indian students. One section covers the legislative history of several laws on federal funding for Indian education: JOM; Public Law 874 and Public Law 815 (together known as Impact Aid); the Elementary and Secondary Education Act, Title I; the Indian Education Act, Title IV; and the Indian Self-Determination and Education Assistance Act (Public Law 93-638). Other sections discuss: property tax as a source of funding for public schools on or near reservations; JOM funds; supplementary federal programs (including suggestions from Indian parents and fiscal data); and plans in 10 states for financing Indian education. Included are 8 conclusions and 14 recommendations. Appendices contain excerpts from the work requirements for this report, a seven-page bibliography, comments from the Affiliated Tribes chairman, and Indian leaders in New Mexico, Alaska, and Minnesota, and excerpts from a fact sheet by the Red Lake Education Task Force. (AN)

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STUDY OF TITLE II
OF PL 93-638

A report prepared
for the Bureau of Indian Affairs
by the National Indian Education Association

Minneapolis
September, 1975

RC 012616

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PREFACE

This report was prepared by the National Indian Education Association (NIEA) in accordance with Contract No. K51C14200949 with the Bureau of Indian Affairs. The report is a compilation and synthesis of several investigators' work. The NIEA would like to acknowledge the efforts of the research teams led by Myron Jones of Indian Education Training, Inc., by Helen Scheirbeck, by Elizabeth Whiteman Runs Him, and by Richard Wilson of The Management Group, Inc. While in some cases it is no longer easy to identify the contribution of each group, the review of legislative history can be attributed to Helen Scheirbeck and her assistants, the discussion of property tax and economic development to Richard Wilson's group, the report on the Federal supplementary programs to Elizabeth Whiteman Runs Him and her staff, and the sections on Johnson O'Malley funding to Myron Jones and his staff. These investigators were united in support of the Conclusions and Recommendations presented at the end of the report.

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I. BACKGROUND AND INTRODUCTION

This is a report of the slip between cup and lip. Since the late nineteenth century the Federal government has been financing, in one way or another, the education of Indian youngsters in public schools. Yet public schools are a creature of the States. The complex and difficult relationships of Indian and non-Indians cut across the tensions of Federal and State-local jurisdictions. Changing United States policy towards Indians has usually been reflected closely in policies toward educating Indians. One trend has survived numerous changes in policy: more and more Indian children are educated in public schools, fewer and fewer in Bureau of Indian Affairs operated schools.

For some 50 years the Federal government has attempted to cope with the problems raised by the increasing enrollment of Indians in State supported public school systems. Well before the Johnson O'Malley Act, school districts got Federal money for educating Indian children. The Johnson O'Malley Act caused such money to be funneled through State agencies, leading eventually to the odd situation of Federal financing without Federal control. Impact Aid (PL 874, PL 815), Title I of the Elementary and Secondary Act, and the Indian Education Act, represent a succession of legislative and regulatory remedies and adjustments that - whatever their other merits - have not removed confusion and inequity from the business of financing Indian education in public schools.

Since education is a function of the States, the States' various attitudes toward taxation and education on the one hand and toward Indians on the other, shape the ways in which educational costs are borne. State plans for financing education, for example, both determine and reflect how much of the cost of schooling is paid out of whose pockets. Some States place the major burden on local property tax, others on State income or other tax; others depend on Federal revenues to degrees which may or may not prove beneficial to the Indian children who go to the public schools. Some of these Federal revenues pay basic educational costs that elsewhere the States or localities would pay with their tax money; some of the Federal funds are confined in theory to meeting the special educational needs of Indian children through supplementary services and programs.

States have taken on an increasing share of the responsibility for funding public education, in particular, for funding it in such a way that the disparities between the educational opportunities afforded to the rich and to the poor are reduced. Pressures for equalization have come from other areas than Indian education. Court cases have made it clear however, that equalization is a matter for State legislatures to handle. Confounding the equalization issues with regard to Indian education is the availability of large amounts of Johnson O'Malley funds for paying basic costs of educating Indian children. Far from maximizing the benefit available to all Indian children however, these funds in some cases have the effect of allowing the States (and the taxing jurisdictions within them) to evade their constitutional and statutory responsibility to provide an education for every child.

In the case of supplementary programs especially, Indian tribes, parents and students have been acquiring a progressively stronger but not necessarily adequate voice in the allocation of funds and the implementation of programs. Indian parent committees exercise considerable power in some school districts. Such committees are a special case of the Indian movement toward control over the institutions that impinge on them. Contracted and other Indian community controlled schools are another case. Bureau contracts with tribes are an earlier example of a similar movement toward self-determination. The prospect of such accomplishments was the focus of the Indian Self-Determination and Educational Assistance Act of 1975, enacted "to provide maximum Indian participation in the government and education of the Indian people;... to support the right of Indian citizens to control their own educational activities." Title II of that act, the Indian Education Assistance Act included in it the requirement that "after conferring with persons competent in the field of Indian education, the Secretary of Interior...shall prepare and submit to the committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975 a report."* What the report was expected to include was conveyed by Section 203 of the Act:

> After conferring with persons competent in the field of Indian Education, the Secretary in consultation with the Secretary of Health, Education and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:
>
> (1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including--
>
> (A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;
>
> (B) the relationship of the Act of April 16, 1934 (48 Stat. (596), as amended, to--
>
> (1) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and
>
> (ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and
>
> (iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and
>
> (iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

(The Acts referred to in part (1) of Section 203 above were the Johnson O'Malley Act, PL 874, the Elementary and Secondary Education Act, The Indian Education Act and PL 815 respectively.)

The legislative description of the report was transformed into the Work Requirements for the present report; the text of those Work Requirements is excerpted in the Appendix. The requirement in part (4) of Section 203 of PL 93-638 concerning a program to assist Indian controlled community colleges was not included as part of the scope of work for the present report, but rather was met separately through a report prepared by the American Indian Higher Education Consortium Denver, Colorado.

II. METHOD

The method for selecting States and school districts for study and for collecting the data depended upon the type of question that was being asked. For example, for the study of the utilization of Johnson O'Malley funds for meeting basic costs, we followed this rationale: Although 24 States now receive Johnson O'Malley funding, only five - Arizona, Iowa, Minnesota, Nebraska, and South Dakota - contain school districts that apply for Johnson O'Malley funds to meet basic operational expenses. This simple statistic led us not to take samples within all States but rather to go to all districts that had claimed need within those five States. Asking people whether or not they need more money may be a profitable exercise for rooting out saints, ascetics, and misanthropes; it does not seem suited to the exploration of public finance issues. We did, however, make direct financial comparisons between districts that asserted need and average districts within those States, and we compared the financial levels of States that claimed need with those that did not. We collected, examined and analyzed the budgets of the 25 districts that had requested JOM basic support money for the school year 1974-1975. Our goal was to collect all budgets from school years 1973-1974, 1974-1975, and 1975-1976 from a district, State and BIA Area level; we succeeded in getting over 95% of that data.

The study looked at total funding sources, their administrative systems, uses, and individual financing formulas within States. We also made a comparison between State systems that did and did not use JOM for basic support. The various State and local administrative systems were measured against the existing (9/74) Johnson O'Malley regulations.

Throughout the study we looked at all funds available to school districts and asked a series of questions. (1) Are they in need (poor)? If so, compared to what and to whom? (2) If they are in need, why? Are they made poor because of the Indian students attending or because their State has an unusually low commitment to public education? Is the district poor because of tax exempt land, and, if so, why doesn't PL 874 compensate for the tax loss? (3) Does supplanting take place? Is the JOM funding really added to the budget or does it simply replace other money that would be there if there were no Johnson O'Malley?

For the question of what role property tax plays in the financing of Indian education in public schools, we studied the five States just mentioned plus Alaska, Idaho, Montana, New Mexico, and Oregon. Among the criteria for selection of these States were the presence of public school districts with large enrollments of Indian pupils; the presence of large blocs of Federally owned land and especially Indian reservations; a substantial use of Johnson O'Malley funds in support of Indian students' education in public schools; ongoing or imminent economic development by Indian tribes that has an impact on the tribes, especially as a result of exploitation of natural resources; and, a variety among the State plans for financing education sufficient to allow informative comparison. It was not always possible to get a convergence of all of the selection criteria; nevertheless, the ten States did have an informative variety of education financing plans, and at least some of the other criteria were met in each of the States.

Similar selection criteria also dictated the choice of districts within States. For the study of property tax and related issues, the districts chosen were always on or near a reservation, had a high percentage of Indian pupil enrollment, used Johnson O'Malley funds, included within or among them students from different tribes, and allowed an instructive comparison of rich and poor districts, large and small, elementary and high school, and so on. The main exception with respect to selecting districts was Alaska, where investigators did not go to particular districts. Selection of a district also implied selection of a county since investigators visited each county seat as well as the school district offices.

We conducted interviews at (1) County offices, (2) State education departments, (3) Local education agencies, (4) Bureau of Indian Affairs Area Offices or education offices, (5) Indian groups such as Tribal Education Offices, Legal Aid, or community groups.

County assessors and auditors supplied data on valuation, taxation, allocation, categories of property, bonding capacity and the like. Where county officials also determined policy for the local districts, county school superintendents or their budget directors were interviewed.

State education officials helped delineate their State's plan for financing public schools, and provided information from the Indian desk, the PL 874 desk, the Supplemental Program desk,and the Finance Department. Interviews with State officials were particularly valuable for defining the State's concept of its responsibility for Indian education.

Local school district officials provided district budgets and other fiscal information, descriptions of Federally supported programs, explanations of special situations, opinions on the relationships of Federal, State, and local financing of Indian education, and, in general, a "firing-line" viewpoint. While superintendents were asked their perception of the delivery of supplementary (Federal) services, no attempt was made to determine the quality of supplementary services.

Much of the information on Federal programs in Alaska came from the 2(c) Report: Federal Programs and Alaska Natives. A few other secondary sources were important. Statistics describing the contributions of corporate taxes in Indian districts in Arizona came from the Arizona Tax Research Association in Phoenix. Its counterpart in New Mexico - The New Mexico Association of Commerce and Industry provided similar information. Most of the demographic and economic data used for comparing States in the research area came from the National Education Association publication, Rankings of the States, 1975.

For the questions of legislative history and intent most of the research consisted of examination and comparison of documents, although persons likely to have expert knowledge of these questions were interviewed as well. We looked only at legislative history and not at the case law. Our sources included Department of Interior records in the National Archives, Congressional records of hearings before various committees on numerous bills, Senate and House reports, as well as special reports. A complete bibliography for this part of the study is appended. Where direct evidence from the language of the law itself, from hearings, committee reports and floor debates was scant - as was true of the Johnson O'Malley Act - we examined predecessor bills, early applications of the Act, notably the first three State contracts, administrative regulations, pronouncements, and opinion.

For the study of supplementary Federal programs, we surveyed school districts in seven of the 24 States that receive Johnson O'Malley funding, namely Alaska, Arizona, California, New Mexico, Oklahoma, South Dakota, and

Washington. We sought a diversity of JOM contracting. Alaska and California presented unusual contracting situations and were studied separately: in each the remaining five States, ten districts were selected, and of those, two districts in each State were examined as case studies. In addition to questioning district officials, we surveyed parents, committee members, contractors, and Area officials and tribal representatives. We were concerned with knowledge of supplementary programs, degree of participation in shaping those programs, subjective assessments of the programs, and distribution of programs by types of objectives and sources of funding.

Also in studying supplementary programs we traced the allocation of Federal funds to States that got Johnson O'Malley aid for 10 different fiscal years between 1935 and 1974. We attempted to track funds from the appropriation, to the Central office of the Bureau, to the State or other contractor, and to the local school district or other final recipient.

Limits of the Study

Wherever data had to be collected in the field, there was a severe time constraint. Most important some fiscal records for 1974-75 had not been closed out. Also, some school employees and other respondents could not be reached in the summer months. No evaluation of the effectiveness of any school programs was attempted. Further, there was virtually no opportunity for rebuttal of our findings by our sources. Most of those surveyed or interviewed were quite cooperative and helpful.

III. LEGISLATIVE HISTORY

THE JOHNSON O'MALLEY ACT

Introduction

The Johnson O'Malley Act of 1934 authorized the Secretary of the Interior to enter into contracts with any State or territory for the purpose of funding Indian education. This section of the report describes the complex history of JOM from its predecessor bills to its current amendments and regulations.

The Original Johnson O'Malley Law

The Johnson O'Malley Act became law on April 16, 1934,[1] after more than eight years of debate on the concept it entailed. It was amended substantively by the Act of June 4, 1936,[2] and remained in essentially that form until amended again by the passage of the Indian Self-Determination and Education Assistance Act of 1975.[3] Section one of the original act authorized the Secretary of the Interior, in his discretion,

> to enter into a contract or contracts with any State or Territory having legal authority so to do, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the qualified agencies of such State or Territory, and to expend under such contract or contracts moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State.[4]

That is, for our purposes, the Secretary of the Interior contract with any individual State to have it provide education through its State Department of Education for its resident Indians.

Section two of the Act authorized the Secretary of the Interior to permit contracting States to use existing Federal school buildings and other appropriate facilities, including all connected equipment and property, under terms agreed upon for the purposes of the Act. Very importantly, the Secretary was authorized by Section three to make the necessary rules and regulations, providing that the minimum standards of service were not less than the highest maintained by the contracting State. Section four required annual reports to Congress, and the fifth section excluded Oklahoma from the provisions of the Act, because the State believed that its own Indian agencies could provide adequate services for Indians. Congress did not appropriate money directly for the JOM Act. Funds appropriated under the general authorizing act for the Bureau of Indian Affairs, the Snyder Act of 1921, were used to fund JOM contracts.[5]

The JOM Act Amendment of June 4, 1936 changed the law in several important ways. The words "having legal authority so to do" were omitted. This phrase had been interpreted to mean that any State wishing to contract under Johnson O'Malley would have to enact special enabling legislation or provide the Interior Department with an opinion of its attorney general showing the State had the power to enter into such contracts. This procedure was found to be unnecessary, as all States had the requisite power, and was subsequently deleted. More importantly, the Act was amended to allow more authorized parties to contract with the Department of the Interior than just individual States. After the amendment, the Department could contract with...

> any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education...of Indians in such State or Territory, through the agencies of the State or Territory of the corporations and organizations hereinbefore named...(49 Stat. 1458, emphasis added).[6]

Theoretically, this provision made it possible for the Indian tribes or organizations to incorporate under State law and then contract with the Department of the Interior. Several other minor changes in JOM were made by the Act of June 4, 1936. Sections two and three were technically revised to be consistent with section one. Section four was left untouched, and Section five was repealed.[7]

Thus, this Federal education act for Indians was left broad and ambiguous, subject only to changes in administration through regulations issued by the Bureau of Indian Affairs.[8]

On February 2, 1934, Senator Hiram Johnson of California introduced S 2571,[9] a bill which was to become the Johnson O'Malley Act. It was referred to the Committee on Indian Affairs chaired by Senator Burton K. Wheeler. No printed hearings are available on the bill but the committee reported the bill out favorably to the floor of the Senate on March 20, 1934.[10]

The four-page Senate Committee report, Senate Report 511, explained the intent as follows:

> This bill is intended particularly to make it possible that the Department of Interior should arrange for the handling of certain Indian problems with those States in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population. In such States Indian health, for example, becomes a problem so intermixed with that of the general health of the community that it is difficult to separate the two. The maintenance of a State health agency or a separate health agency for Indians under these circumstances is found to be uneconomical and contrary to efficient administration. This bill would make it possible for State health agencies to take charge of Indian health, and for the Federal Government to bear the added expense.
>
> In many sections the education of the Indians is found to develop into a similar situation. The Indians in these sections are largely mixed with the white population, and it becomes advisable to fit them into the general public-school scheme rather than to provide separate schools

> for them. The Indian Service has already established the precedent of arranging with many local communities to take Indian children into the public schools, but it has lacked authority to transfer such functions on the broader basis to the States. It has held to the theory, however, that the Indian child in public schools, side by side with the white children, makes more progress toward adjusting itself to a modern world than when it attends schools maintained for Indians only.[11]

This report pinpoints several elements as a part of the bill's legislative intent. First, concern for the welfare of the Indians is expressed in the desire to aid a limited class of Indians--the scattered, non-reservation Indians for whom the Department of Interior was responsible but unable to provide. Second, there is a self-interest factor, particularly in the health area, where uncontrolled disease would harm whites as well as Indians. Third, a strong argument is made for the economies obtained by not unnecessarily duplicating facilities for health, education, and other needs. Closely tied to this is the fourth reason--desire for more efficient administration and reduced overhead. The broader contracting authority with the States would eliminate the hundreds of individual school district contracts which the Bureau of Indian Affairs had been making in the past. A fifth reason was to "civilize" the Indians, hopefully by helping them adjust to the "modern world." The report was careful to state that the bill did not make the transfer of these programs mandatory but only possible, if deemed advisable by the Secretary or his lawful agent, the Commissioner of Indian Affairs. It further stated that the contracts would be regarded as "experimental."[12]

This Senate Committee Report also included the views of Secretary of the Interior, Harold L. Ickes, and Commissioner of Indian Affairs, John Collier. Both letters were in favor of the bill and contained only slightly different wording. They said that the underlying principle of intergovernmental cooperation had long been accepted by those interested in the welfare of the Indian. They further noted it was "neither necessary nor wise" to deal with Indians mixed into the general population on a segregated basis, and that it was "highly desirable" for the governments to cooperate to serve rural Indians, but they did not say specifically why. Financial savings, simplicity, and effectiveness appear to have been the bases for their opinions. Importantly, they said, "it is not contemplated that this cooperation will develop to any extent where solid groups of Indians reside, such as in the Southwest, unless Indians themselves seek this kind of cooperation."[13] This statement is support for both Indian community services under JOM contracts and perhaps even for Indians as contractors, two more modern extensions of JOM. The House Committee Report was identical to the Senate report except that it contained only the Collier letter.[14]

Predecessor Bills

A number of predecessor bills similar to Johnson O'Malley were introduced into Congress beginning in 1926. The complete history for all of these contributes to the pertinent legislative history of JOM. For purposes of this report however, the following chronology summarizes the most relevant Congressional activity prior to 1934.

JOM Predecessor Bills and Legislative History

Year	Legislation	Content
1926	Swing-Johnson (California) HR 8821[15] La Follette-Cooper (Wisconsin) S 3611 HR 10350[16] Wheeler (Montana) S 5498[17]	State bills. Prototype of original JOM. No mention of contracts; funds to be administered through State agencies; State access to tribal records; experimental.

Year	Legislation	Content
1927	First recorded Senate Subcommittee hearings on State bills.[18]	
1927	HR 7031 introduced at request of Department of Interior.[19]	Similar to original JOM; included agency access to tribal lands to enforce health and compulsory education attendance laws.
1927	HR 1955[20]	Included themes of Federal and State responsibility in lieu of tax payments, and non-duplication of facilities.
1929-1930	S 2669 HR 7990[21] S 3581 HR 9766[22]	Re-introduction of Irving-Johnson. Identical to original JOM. Passed Senate; failed House.
1931 1932	HR 237[23] (Identical) S 3110[24]	Applied to all States. Provided authorization for States and BIA to cooperate after State legislatures passed enabling laws. Amended by House to apply only to California as an experiment. Passed Senate; failed House.

Review of Interior Appropriations and JOM

Some excellent insights into the desired use of Johnson O'Malley money can be garnered from Interior Department appropriations hearings.

Hearings conducted in 1933 for Fiscal Year 1935 programs did not elaborate as to the uses of public school tuition money. It was provided, in general terms and for the protection of Indian students, that the school districts were to use Federal money only for "current operations" and "to maintain standards in teacher preparation, equipment and other matters"--that is, adequate basic education was to be provided. It was explained that it had been necessary to make provisions for noonday lunches in many schools, especially for children who had just previously been enrolled in boarding schools. When necessary, clothes were also provided.[25] The hearings taking place after the enactment of the JOM Act began an emphasis on more than a basic education. In the fiscal year 1936 hearings, the Indian Office general statement on the JOM Act concluded,

> ...if we can, by the method of paying tuition for Indian children, demand and secure desirable educational activities that would otherwise not be forthcoming, there would seem to be justification for taking the step in the interest of both Indian and white children.[26]

The use of the word "tuition" in this context makes the JOM Act sound like a continuation of the old tuition payment policy with new machinery, perhaps with a hope for benefits beyond a basic education. The fiscal year 1937 hearings took this idea a step further.

> ...When arrangements can be made with the public school district to provide them, the special services (food, clothing, school supplies, vocational training, etc.) are included in the tuition agreements and furnished by the school district...We are from time to time requiring the States and districts where this can be arranged to assume the greater part of the strictly educational costs thus providing that an increased proportion of tuition paid shall be expended for special services.
>
> There are some States where there is no equalization law and the districts are still largely dependent on local taxation. Here, the Indian Service must continue to assist with the actual cost of maintaining the schools as well as providing funds for the special services required for Indian children.[27]

These hearings suggest a policy in which the same money that once went into the general school fund for basic support now was to go for special services for the Indian children when possible. The evolutionary process whereby States would gradually assume the responsibility for the basic education of all Indian children because they are citizens was gaining momentum, and JOM funds were being pushed toward supplementary programs. It is important to note that the above quotation reveals that the Indian Office regarded State contracts and individual district contracts as serving the same purpose, meaning that JOM was seen at least for some purposes as a continuation of the old tuition payments system, but on a larger scale.

The 1938 appropriations hearings stated that JOM funds should go for supplementary programs which no other funds could provide. In reference to State contracts, the budget justification statement of the Indian Office stated:

> ...The contracts provide for education of the Indian children with special emphasis on the development of courses particularly adapted to the needs of the Indian children; and where actually required, and to the extent to which funds are available under the contracts, for transportation of the children to and from school, for noon-day lunches, textbooks, and school supplies. These States, California and Washington, have shown a cooperative interest in adapting the work to the needs of the Indian children, and we are inclined to believe that the education afforded white children will be improved through the attention which has been called to the special needs of Indian children and consequent improvement of courses at the schools.[28]

The Interior Department, inspired by the ideas of California and Washington, in just two years had begun to expect far more from JOM "tuition money" than mere basic education. It now emphasized special courses to meet the special needs of Indian children, put transportation, lunches and supplies at a lower priority, and basic education at the lowest priority level for JOM funding. This completely reversed the priorities which seemed to be laid out in the first State contracts, and still lingered even in the previous fiscal year hearings, in spite of clear evidence of growing emphasis on food, clothing, transportation and vocational education. The specific reference to State contracts in the 1937 hearings had mimicked the language of the first State contracts, saying:

> These contracts provide for education of the Indian children; and where required and to the extent to which funds are available under the contracts, for their transportation to and from school, for noon-day lunches,

> text books, school supplies, school medical and dental service; also, as far as practicable, for special courses desirable for Indian children.[29]

Thus the theory of using JOM funds for programs to meet the special needs of Indian children began in the thirties, although putting that theory into practice on a large scale has taken several decades.

Additional information as to the reasons behind the JOM Act as well as the intended uses of the funds can be found in the appropriations hearings held shortly after enactment of the law. Collier explained in his testimony for fiscal year 1936, that the JOM Act made it possible to contract with States rather than hundreds of local districts, thereby simplifying administration of services, and bringing the movement toward State and Federal cooperation to a focal point.[30] The hearings explained that financial saving was,

> not the fundamental reason, but it happens to be financially economical too. The fundamental reason is to build up the kind of an educational program that is essential to the economic and social development of Indians...The whole object of the change is to transfer the responsibility to feed, clothe and transport students to the home and the community.[31]

Director of Education for the Bureau of Indian Affairs, Carson Ryan, testified that Federal money could be more economically used if combined with State resources, and this was certainly a large purpose of JOM.[32] In the fiscal year 1938 hearings, an Indian Office official testifying on segregation of Indian school children revealed that there were two somewhat contradictory theories co-existing in the BIA as to cultural assimilation. The testimony reads:

> ...where Indians are interspersed more or less with the whites we feel that it is best to have the two on an equal basis and to have a segregated Indian school under such circumstances would be most unfortunate and...the two should be together in the public schools.[33]

Integration and cultural assimilation as above was one of the original purposes of JOM. However, more recently an espoused emphasis for JOM has been the preservation of Indian culture, and the BIA was advocating this as well:

> On the other hand, where you have a rather compact tribe or group largely full bloods...where they own land which would make them largely self-supported if they used it, you have the problem of proper training and development of Indian culture, and under such circumstances it is much wiser to have them educated in their own area than in the public schools where the two would be mixed.[34]

Experimental Nature of JOM Contracts

A major difficulty in defining the intent of Congress in passing the Johnson O'Malley Act is that this legislation was regarded as experimental because it established a relationship between the Federal and State governments which was novel in this field. The Senate and House reports on the legislation which finally became the JOM Act stated, "the contracts will be regarded as experimental and may be cancelled at the expiration of certain short terms.[35] Thus no one knew exactly what to expect.

In the 72nd Congress, 1st Session, the House Committee of Indian Affairs amended S 3110, a general precedent bill virtually identical to JOM, to apply only to California. In the floor debate, Congressman Scott Leavitt of the Committee explained that confining the bill to California, which had long desired the legislation, was a proper step, taken in order to avoid having representatives disapprove "any experimental legislation."[36] In March of 1935, almost one year after JOM was enacted, the act was still considered experimental. Secretary of the Interior, Harold Ickes, in a letter to the Chairman of the House Committee on Indian Affairs, wrote:

> Under the Johnson O'Malley Act, passed by the last Congress,

> the Department is entering into various arrangements, more or less experimental, with States and their subdivisions (particularly California, Washington and Minnesota), designed to bring to the aid of Indians the services of many branches of State governments. A rearrangement of the Federal Indian budget is involved in the full application of the Johnson O'Malley principle.[37]

The first three States to have contracts with the Federal government, California, Minnesota, and Washington, were also aware that the legislation gave them room for experimentation. After visiting many areas of California, in January of 1936, to investigate that State's contract under the JOM Act, the Supervisor of Indian Education, in charge of Public Relations wrote, to the Commissioner:

> ...It is well known that for the fiscal year 1935 the Johnson O'Malley contract (the first contract under the act) was an experiment and hardly that. As I recall it, the contract was late in being signed; Superintendent Kersey of the State Department of Public Instruction could not get his organization together for some little time, which was to be expected, and with the other duties to be performed by Mrs. Hill, who directed the education program for the Indians it was not expected that a great deal could be obtained. It was new, the whole plan of payment was changed and it took a year to find out where the State and the Federal Government really wanted to go, even if we have found out yet.[38]

In Minnesota, the third State to have a Federal contract, the officials of the State Department of Education wrote to the teachers and officials of Indian schools in September, 1936, "Experimental procedures, well planned and purposed, will be encouraged."[39] The experimental nature of the relationship between the Federal Government and the States led to experimental uses of Federal contract money which replaced the dollars previously appropriated to many school districts to pay tuition for Indian students and to become lost in the general funds.

The vital section of the first JOM contract, that of California for fiscal year 1935, reads as follows:

> 1. The party of the second part (California) hereby agrees to provide education in its public elementary schools, public secondary schools, junior or senior colleges, special schools, vocational or trade schools, to all Indian children residents of the State of California upon the same terms and under the same conditions as to all other citizens of the State; to provide, so far as funds transferred in accordance with the terms of this contract by the party of the first part will permit, transportation of Indian pupils to and from schools where necessary, school lunches for Indian children when needed, required text books and school supplies, and school medical and dental services; also, so far as practicable, to afford special courses in Indian arts and crafts, physical and health education; and, in distinctly Indian communities, to provide an educational program designed to meet the special needs of the Indians, this program to be adopted and carried out, wherever feasible, with the advise of anthropologists acquainted with the particular Indian group and after consultation with recognized representatives of the Indians, to the end that the program shall take adequately into account the Indian community life, shall be based on Indian economics, health, and social needs, and shall encourage Indian participation.[40]

This section can be taken as representative of the other early contracts although there were some variations which will be explained below.

The other important parts of the contracts provided (1) that the State would secure regular attendance of Indian students in public schools according to State law, (2) that State agents would be allowed to enter Indian reservations to inspect health and education conditions, (3) that no Indian child could be kept from attending school except in accordance with State law indiscriminately applied, (4) the State would provide standards of education for all schools with Indian pupils which were not less than the highest maintained by the State, (5) money paid under the contract could be used only for obligations of the fiscal year covered by the contract, (6) the State would submit an annual report, and (7) the State

Government could use unneeded Federal Government buildings and equipment. An installment method of payment to the State was also described.[41]

In addition to the basic education and special services provisions, the contract shows that the Indian Office specifically intended that the opinions of Indian representatives would be used in creating community education programs, as well as the expert advice of anthropologists. The programs were specifically to integrate economic, health and social needs of the Indians. Both Washington contracts and the first Minnesota contract in their first sections omitted references to anthropologists and the integration of specified Indian needs into community programs. Significantly, the Minnesota contract left out medical and dental services from the list of special services to be funded. Heavy expenditures of education money on health services in California was the subject of considerable controversy and this could have led to the omission in the Minnesota Contract.[42]

Probably as the result of new State employees siphoning off JOM funds unwarrantedly for salaries, the second California contract added a provision not in the first which provided that no supervisor appointed by the State could be salaried by the JOM funds unless approved by the Commissioner of Indian Affairs. This provision was retained in the other contracts. Only the California contract allowed monies paid under the contracts to be used by the State for maintenance and repair of public schools with Indians enrolled, and only "equitably" in amounts proportionate to the number of Indians enrolled. All the contracts provided that money paid should go only for the fiscal year and purposes covered by the contracts. This was undoubtedly a response to past misuses of tuition funds, including hoarding, even until no Indians were still enrolled in a recipient school.[43]

Only the California contracts and the first Washington contract required reports showing application and expenditures of the funds for the past fiscal year, in addition to enrollment and average daily attendance figures, descriptions of education conditions of the Indians, and budget estimates for the following year, which were required in all the contracts. For some reason the Indian Office apparently lowered the accuracy and accountability of its reporting system.

The method of payment to the States was liberalized as experience dictated, from payments at the end of the second, third and fourth quarters, to payments at the end of each quarter or month, including summer months when appropriate. However, the method was one of reimbursement rather than advance payment. A limitation on administrative expenditures appeared in the first Minnesota contract. Only the first California contract contained the clearly controversial provision calling for apportionment to school districts "in terms of attendance and Indian educational need."[44] The arguments against this clause are not clear from Interior Department records.[45] Basing disbursement on Indian educational need is a progressive and complex idea, especially when compared to the simple system most often used with tuition payments--average daily attendance times average cost per child. Average daily attendance apparently continued to be a factor in disbursement as it remained a factor in the annual reports. As a result of the policy to transfer Indians from Federal to public schools, presumably for efficiency, all contracts provided that public school districts could utilize unneeded Federal school buildings and property, if they kept such buildings in reasonable repair.

Although the first section describing uses of the funds was essentially identical in the three earliest State contracts, California, Washington, and Minnesota quickly developed distinctively different uses for the funds received under their JOM contracts. Thus, Congressional, and even Indian Office intent cannot be easily and substantively defined and limited from an analysis of the early operation of these three State programs. The intent seems to be only that, given enough time and room for experimentation, the most effective and economical use of JOM funds for the education of Indians would ultimately evolve. This is supported by the fact that the 1936 amendments, requested by the Department of Interior and particularly Commissioner John Collier and enacted by Congress, did not clarify the uses of the funds when divergent uses were obvious.

The California State Department of Education believed that JOM funds were intended to provide special services for Indians rather than pay for basic education costs. Even before JOM was enacted, California was concerned that the tuition payment method was not resulting in the commonsurate benefit to Indian pupils, especially where only a few were enrolled in a public school. Superintendent O. H. Lipps in a memo to Dr. W. Carson Ryan, the BIA Director of Education, cited a number of cases where the tuition payments were abused and quoted a State Department of Education official's comment in the State's education survey as follows:

> ...There are numerous other cases showing that the superintendents have no idea what to do with this money and really have no need for it, because they do not realize that this money is to be used to somewhat equalize the opportunity of the Indian child with that of the white child.[46]

Superintendent Lipps noted that California was ready to enter a JOM contract and suggested that it be done so as to change the "Federal aid from a purely tuition basis to one designed...to meet the needs of the Indian child and to provide better educational opportunities for him."[47] Lipps viewed equal educational opportunity for Indians with their unique culture as necessitating special services and courses beyond merely the same terms and conditions provided for white children. The Superintendent of California's Department of Education, Vierling Kersey, agreeably began "insisting... that tuition in any appreciable amount will be paid largely for work other than academic instruction; in other words, real services such as noon lunches, medical /sic/, clothing..."[48] Indian Office Supervisor Thompson found Kersey's position gratifying and progressive, and noted to the Acting Director of Education that "Kersey and his staff would know better than any of us where to pay academic tuition," although he expressed some concern about the legality of using education money extensively for welfare services.[49]

In a letter to all county superintendents of schools expressing concern over the Indian office's failure to quickly renew the contract for a second year, Kersey expressed his conviction that "every dollar disbursed last year under the contract purchased one hundred cents of education and service for Indian children," and assured the superintendents that all services regularly available for both Indians and whites would be continued even though special services for Indians might have to stop.[50] On September 5, 1935, the contract was finally received.

The new contract was essentially the same as the original, and Kersey interpreted it, as before, according to his philosophy on Indian education. In a letter to the county superintendents, he said:

> ...The contract this year provides that payments will be made on a basis of Special Educational Services rendered to the Indian children. In other words the funds must be spent in offering something that the Indian child would not ordinarily receive if this money were not available."[51]

He enumerated the special services such as transportation where not already provided, hot noon lunches, medical and dental services for children whose parents cannot provide it, supplies, salaries only for teachers of special courses in Indian arts and crafts, physical and health education, maintenance and repair of schools in proportion to the service rendered to Indian children, and clothing. Additional services could be provided and were to be reported. Perhaps anticipating some of the problems that have plagued the administration of JOM funds, Kersey called for reports of expenditures, a separate fund for the Federal money, and a voucher system.[52] California allocated money to the districts according to average daily attendance of the Indians and the amount of special services rendered to the Indian children. No special services meant no payment.[53] This method was consistent with the controversial provision in California's original contract which had provided for apportionment of funds to districts "in terms of attendance and Indian education need."[54] This clause was eliminated from the second California contract and did not reappear in any other early State contract,[55] although money was generally allocated on the basis of average daily attendance, and use of funds to meet Indian educational needs was emphasized in fiscal year 1938 appropriations hearings.

One of the reasons California was able to use the Federal money for special services rather than basic support, i.e., school maintenance and operation, was that California had in 1933 transferred the cost of maintaining public schools from the county and local district to the State general fund. The public schools, particularly rural elementary schools, were supported almost entirely from sales, corporation and other general taxes, some of which Indians paid, and the State Department apportioned State school funds on the basis of average daily attendance, regardless of race. This meant that the usual "in lieu of /_property_/ taxes" justification for Federal aid to public schools did not apply to California as it did in other States. Thus, Indian Office Supervisor Lipps thought that the only justification remaining was special services not ordinarily in school budgets.[56] However, Kersey himself presented "reservations and other untaxed properties" as a justification for Federal funding in his 1936 congratulatory letter to the new Director of Education, Willard Beatty.[57] He may have done this out of fear of an appropriations cut now that tuition money was no longer needed, but the "in lieu of taxes" argument still carried weight because building costs and certain maintenance costs were paid from property taxes from which most Indians were exempt.[58] More generally, in his January, 1936, report on the contract for fiscal year 1934-35, Kersey explained that because Indians provide no wealth to a district, the State and Federal policy has been to reimburse the districts for their Indian related expenses, within limits.[59]

California's first annual report was a progressive document. It stated that, "In many instances, the life of an Indian is such that it has been necessary to provide particular services in order to best meet educational needs," and that, "In order to encourage and perpetuate Indian arts, crafts, ideals, and life interests, special instruction has been offered to Indian children."[60] Its statement of policy included the usual items concerning becoming self-sufficient, learning to compete in society, local responsibility for Indian education, and accepting complete responsibilities of citizenship. However, it also proclaimed "Indian education is always for the purpose of helping the Indian to be a better Indian. He is not to be educationally translated into any other racial life relationship."[61] This is contrary to the policy of assimilation and civilization espoused by much of the legislative history of JOM. Furthermore, the final policy statement declared an idea more common to the mid-seventies:

> A unified community concern about the welfare of the Indian in all of his relationships to his own life and to community life must be stimulated by community activities centering around the school.[62]

In actuality, according to a January, 1937, statement on Indian Education in California, even in its second contract year, California had been able to spend relatively little money on special teaching and curricular needs. Transportation was the largest single item of expense, but relief in the form of food, clothing and health services required a greater total expenditure of money, largely because of the poverty and isolation of most of the Indian families. Demands for health services exceeded the money available for that purpose, and appropriately the question was raised as to whether money appropriated for education should be spent on remedial and recurring health problems.[63]

In marked contrast to California, Washington, the second State to contract with the Federal government, used 80 percent of its Federal contract money for payment of "tuition" and expressly rejected its use for welfare purposes. The State's Superintendent of Indian Education, Homer L. Morrison, advised Collier: "I am trying to keep our funds in strictly educational fields, and to let the Social Security set-up take care of the Welfare Program."[64] Still, Washington spent considerable sums on lunches and transportation, items which the California Department of Education considered welfare items.

As in the case of California, the Indian Office allocated to Washington under its first JOM contract the total amount previously allotted to the State's districts for payment of tuition and specified other services--

in this case transportation, lunches, books, supplies, clothing, and baseball equipment.[65] No increase was allowed although Indian enrollment had risen 20% and was rising 10% per year. They may have been the result of a Federal desire to have States gradually assume financial responsibility for Indian education. Washington's Department of Education clearly viewed its payments under the JOM contract as tuition payments as evidenced by the fact that in its first annual report it referred to the money as "Indian tuition payments from Federal funds."[66] It based its allocations to districts on the cost per pupil per day as had been done in prior years.[67] Thus, Washington continued the use of Federal funds for Indian education as payments "in lieu of taxes."

Washington, in its financial squeeze, refused to begin any new lunch programs under the JOM contract without increased appropriations.[68] With its emphasis on educational uses of the Federal funds, Superintendent Morrison reported to Collier that the State was

> planning for a more specialized use of the contract money, to the end that Indian boys and girls may be kept in high school through graduation, and may have greater opportunities for vocational training.[69]

Morrison also began helping the State Department of Education to concentrate its effort and money in communities largely populated by Indians so that Federal money could help the greatest number of Indians possible. He consulted superintendents and school boards to determine the best types of schools and teachers for Indian children, and quickly added visiting teachers and vocational education where needed most urgently.[70] In summary, Washington used its Federal money for tuition (basic support) to meet the needs of school districts while working toward meeting special educational needs of Indians.

The Minnesota Department of Education stressed the use of JOM money for Indians only to develop an enriched curriculum with better teachers so that Indian citizens could enjoy maximum educational experience and development. This basic theme contrasts with California's primary welfare concern and Washington's tuition use. In a letter to teachers and school officials, Minnesota Department of Education officials wrote:

> ... The State Department considers this Indian money a sacred trust to be used in lieu of local district tax money for the education of Indians, and Indians only...
>
> The purposes of the new /budget/ plan are not only to insure equitable distribution and use of Indian funds but to build a pattern of education for the Indian in keeping with his developing needs and desires. This will involve in many schools a changed and enriched curriculum. It will necessitate complete departure from the philosophy of education which glorifies information-getting for its own sake, which practices forced feeding in order to get children through State board examinations, and makes a virtue of docility.
>
> Rather, the type of school experience which we hope to develop for the Indian will lead to growth in self-reliance, health, economic self-sufficiency, group cooperation, and responsibility. Mere academic knowledge is far less important to the Indian than understanding of his own problems and experience in doing something about them...[71]

In order to make the most progress quickly, the Minnesota Department of Education chose to concentrate its attention on a few selected schools, selected chiefly because of the high quality of teaching personnel and also because of their high proportion of Indian students. The Department did not prescribe a course of education, but preferred to allow the teachers to experiment, with the help of advice and material aid. One important goal was to have the school work with the community and its needs.[72] The State's first annual report showed that Minnesota had worked particularly hard at finding and keeping excellent teachers, well-suited to teaching Indians.

The State even raised salaries to make the positions more attractive as they replaced nearly half of the teachers in the schools involved. By a campaign of persistent conferences and visits, the State fought the nearly universal disposition of school officials and teachers to limit their programs to minimal State course requirements and standards. The State also made plans to get more Indians into high schools, and provided hot lunches for nearly all the Indian students in the schools chosen for JOM funding. As would be expected, the progressive education goals were not met by the end of the first contract year.[73]

In order to disburse the Federal funds, the Minnesota State Department of Education chose 31 target schools and devised a new budget plan, in which the total amount for expenditures was "based on actual needs of a good school," often an amount which far exceeded the previous years' expenditures for Indians. Anticipated income from State aid and local tax levies, in the case of integrated schools, was subtracted from the budget estimate and the difference was supplied from JOM funds in proportion to the number of Indians with the provision that it be spent for Indians only.[74] Under this system the Supervisor of Indian Education assured the Indian Office that "every penny of Indian money is being used for education and special services for Indians only."[75] According to the figures supplied in the first annual report, this procedure meant the State and district revenues paid slightly more than half of the cost of educating 1,436 Indians and 354 whites in the 31 predominantly Indian target schools and JOM funds supplied the remainder. JOM funds paid only a small portion of the costs in predominantly white schools.[76]

Because the Indian Office was well aware that these three States interpreted their very similar JOM contracts so differently, it is significant that the 1936 amendments did not attempt to clarify the purpose and permissible uses of money appropriated under JOM. This could mean that the Indian Office believed it wise to allow States to determine how to use the money.

Various communications from Indian Office officials, during the period of early contracting before the 1936 amendments, provide useful insights into the intent of the Office of Indian Affairs concerning JOM. As pointed out earlier, Samuel H. Thompson, the Supervisor of Indian Education in the Sacramento Indian Agency, admitted as late as January of 1936, that the Indian Office was not yet certain about the purpose and uses of JOM.[77] As to why JOM was enacted, Assistant Commissioner William Zimmerman, Jr., wrote that "the spirit of the Johnson O'Malley Act" was "to move some or all of the institutional resources of [a] State genuinely in the direction of cooperation in Indian matters."[78] Commissioner John Collier clearly believed that two reasons for the existence of the JOM Act were (1) to reduce delay in payments to the local school districts by having only one contractor, the State, and (2) to make more advantageous use of the money paid (probably through less overhead, avoidance of duplication of facilities, etc.).[79] Supervisor Thompson found two good reasons for contracting with Minnesota which would be generally applicable to JOM contracts: (1) it would save the government money, and (2) as past experience demonstrated, the welfare of the Indians and their ability to support themselves would be advanced by their enrollment in public schools (to the advantage of States as well as Indians).[80] Another Indian Office official, G. A. Collins, hinted that an important reason for providing Federal funds under JOM contracts was to entice reluctant, prejudiced districts to accept Indian children and encourage their daily attendance, as funds were ordinarily given on the basis of average daily attendance.[81] This last reason was basically a continuation of one of the theories behind tuition payments before JOM.

A difficult and long-lasting controversy with regard to JOM education funds was involved defining the services to be provided under the contracts. Indian Office officials entertained varied opinions and questions in this regard. W. Carson Ryan, Director of Education, said as early as August of 1934 that services such as shop workers and home economics teachers working in Indian communities and in Indian homes could be covered by JOM education contracts.[82] Superintendent of the Sacramento Indian Office, O. H. Lipps, thought it proper that Federal funds would provide special services--lunches, transportation, books, supplies, medical care--since California did not fund its public schools mainly from property taxes. He reasoned that Federal money for basic education, which was acceptable in other States, would have been unjustified here because basic operational and maintenance funds were already provided by another source.[83] Supervisor of Indian Education, Samuel Thompson, found California Superintendent Kersey's plans for "real service" such as noon lunches, medical attention and clothing both gratifying and forward looking.[84] He believed Kersey would know better than any of the Central Office officials where the education money could best be spent, thereby indicating a willingness to give the State superintendent control over JOM funds. However, he did question the legality of these welfare-type expenditures out of education money.[85] Collins felt that food and care should come under a contract with the State Department of Public Welfare, not the Department of Education.[86] Paul L. Fickinger, Assistant Director of Education, was less concerned with matching appropriations with their stated purpose. He believed the Indian Office should not care whether Federal money or California money provided adequate education for Indians, but only that the Indians receive the requisite education services.[87] However, Fickinger may have believed JOM education funds should not go for school construction and interest charges, according to some sentiments he excerpted for circulation from a letter by Washington's Superintendent of Education.[88] Supervisor Thompson also questioned the use of JOM education funds for construction, as well as for welfare, while accepting the use for tuition.[89]

As to whose needs would be met by JOM funds, the opinions of the Indian Office officials covered a wide spectrum, including Indians in virtually any geographic location, non-tribal Indians, and whites. Commissioner Collier wrote to the Honorable B. K. Wheeler shortly after the passage of JOM:

> If Indians attending a public school come within the conditions mentioned in the regulations (concerning only blood quantum and ownership of non-taxable property), it is not necessary that they or their parents be enrolled with any given tribe or affiliated with a particular Indian reservation.[90]

(The regulations enacted in 1937 did not even mention or refute this use of JOM for non-tribal Indians.) Assistant Commissioner Monahan furthermore suggested that under some conditions both whites and Indians could profit from JOM funds. He wrote to the California Director of Public Health that where it was found that white and Indian children were suffering from trachoma in the same schools, they could all be treated by nurses paid by JOM funds. His reason being that "it is only by concerted action on both races that any real good can come."[91] (The regulations implemented in 1937 did not specifically refute this point, although JOM funds were always said to be "for Indians" rather than for whites and Indians. Yet, in practice of course, the funds often went to a school district's general fund and therefore benefited whites and Indians alike.) As mentioned above, Director of Education Ryan said that services to Indian communities not directly connected with public schools could be covered by JOM educational funds.[92] Superintendent Lipps advocated that, in California, Indian Office efforts should concentrate on the relatively few schools located in Indian communities, where there should be special vocational courses and special courses for adults.[93] Apparently, the Indian Office policy in the early 1930's regarding tuition payments to city schools was to evaluate the existing conditions. Then Acting Commissioner B. S. Garber had written:

> As to cities or large towns receiving tuition you should report facts in specific cases in order to enable the Office to take such action as is indicated.[94]

That scattered Indians were eligible for JOM money is clear throughout these documents, as none of the officials contested the widespread pattern of allotting JOM funds to schools with a small number of Indians.

JOM Regulations for the Amendments of 1936

The Department of Interior regulations to accompany the JOM Act show how the Indian Office intended to administer the JOM Act. However, they do not address some of the most vexing problems presented by the act. These regulations were not enacted until May 27, 1937, more than three years after the enactment of the original JOM bill, and almost a year after the 1936 amendments.[95] Presumably before these regulations were in effect, the old tuition payments regulations, requiring only that Indians served have at least one-quarter Indian blood and that the parents of such Indian children did not own more taxable land than non-taxable land, served as guidelines. This deduction is based on at least two inter-related facts: that the vast majority of States continued to operate on the individual school district contract basis to which these regulations were applied; and that the appropriations made to fund the JOM contracts reduced the total assistance for tuition payments to public schools by the same amount. The regulations said the Secretary could contract when he believed it was for the benefit of the Indians and thus Indian welfare was theoretically, at least, the primary goal. The 1937 regulations did not define Indians in any way, thus the effects of blood quantum, taxable property, tribal affiliation and place of residence--Indian community, city, rural--were not developed. The substantive content of JOM education programs was not described in any way, with the result that the early contracts gave a more accurate description of the programs than did the regulations.

The regulations did imply that whites would share with Indians the benefit of JOM funds. The budget prepared for approval by the Commissioner before contracts were completed showed the "educational needs of the several districts enrolling Indian children, to provide a suitable education program to meet the needs of white and Indian children enrolled."[96] Thus, it appears that JOM funds were to help fulfill school districts' needs, not Indian children's needs, and the money was to supplement the total budget and be used by all children. In this way, the regulations advanced the idea of JOM money for basic support rather than supplemental programs, although supplemental programs specifically and only for Indian children would certainly have fallen within the regulation.

The regulations also failed to set up a separate accounting system for JOM funds. One regulation did require Indian Office approval of personnel in predominately Indian schools. This was apparently intended to prevent hostile school districts from supplying poor and even antagonistic teachers for Indian students.[97]

It can be well argued that the original intent of the JOM Act was to provide for Federal payments "in lieu of taxes" to public school districts needing additional money because of the non-taxable nature of the Indian land within the district. Most school districts depended on property taxes for the revenues to operate and maintain their schools, and if a school with a small tax base due to large blocks of non-taxable Indian land within its district had to enroll large numbers of Indians, it simply would not function sufficiently without an added source of revenue.

A letter from Commissioner Burke explained the tax-related nature of the tuition payments and the purpose for which they were to be used as follows:

> For several years an annual appropriation has been secured for the purpose of paying tuition for Indian children enrolled in public schools. The money is available for payment of tuition for Indian children of one-quarter or more Indian blood who come from families who do not own taxable land within the district. It is paid over to the proper public school authorities, and is disbursed by them for general operating expenses of the schools. The purpose of the payments is to assist public school districts which are losing revenue because of non-taxable land within their districts.
>
> The money can not be turned over to Indian parents for food and clothing, but is available only for payment to public schools. Of course, in some cases schools furnish noonday lunches to Indian children.
>
> The rate paid is based upon the cost of maintenance of each particular school.[98]

At the same time the Indian office was making tuition payments, at least the Assistant Commissioner and the Director of Education in the BIA believed in the important principle,

> ... that non-payment of taxes on real estate should not be the basis for excluding Indian children any more than any other children.[99]

Still, "In public education we /who so believe/ have all had to fight out that principle over a long period of years."[100] With the nation's racial and cultural prejudices and the Indian's unique land situation, the government really had little choice but to make the tuition payments. As to the policy behind paying tuition for Indians it was explained:

> ... This is a better policy and less expensive to the government than taking children to boarding schools away from their homes, at least for an elementary education.
>
> Yet as to the matter of policy, it is quite necessary to secure the cooperation of the public school districts and considering all sections of the country it would appear that such payments have enlisted the interest and assistance of the State public schools and the communities. Therefore, dependent as the government must be upon the States for educational facilities for Indian citizens, it is believed that the transition whereby the States will assume their full obligations must come about gradually and after due notice to the States.[101]

Economics, better education for Indians closer to their homes, and virtual dependency on the States to provide facilities seem to be the core reasons behind the policy.

Tuition Payments and Relationship to JOM

Indeed, Congress did specifically authorize tuition payments beginning with the Appropriations Act approved August 1, 1914, for fiscal year 1915.[102] This appropriations act authorized the Commissioner of Indian Affairs to make regulations governing the use of the tuition funds. The regulations devised were that tuition would be paid for Indian pupils with one-quarter or more Indian blood, whose parents owned more non-taxable land than taxable land within the school district.[103] These regulations make it certain that tuition payments were made in lieu of property taxes. That JOM was a continuation of this policy, with the administrative change that each State could have one contract instead of many, was assumed by John Collier while he was Executive Secretary of the American Indian Defense Association. In his explanation of the Swing-Johnson bill which he presented to the Senate Committee on Indian Affairs and which was reprinted in the Congressional Record in 1930, Collier said:

> The bill does not launch a new policy. The government for many years has contracted with State schools for the education of Indians. More than half of all Federal ward Indians now in school are schooled in State schools, the government contributing toward the cost.
>
> But the bill does extend the schooling precedent to health and relief; and it creates the machinery for effective Federal aid and regulation of the State services...[104]

The specific appropriations for public school tuition jumped from $20,000 in 1915 to $200,000 in 1917 and gradually increased to $475,000 in 1932.[105] Beginning with fiscal year 1933, no specific amount was designated for tuition payments in the Interior Department's general appropriation for Indian education; instead the amount was to be determined by the Indian office,[106] with money saved from closing day or boarding schools and from conversions to less expensive school types intended to go toward tuition payments.[107] This change seems to have come because in 1931, for the first time, there was a deficiency in the appropriation for tuition. The Department was faced with the task of obtaining a deficiency appropriation to avoid failure to meet contractual obligations, which would have meant local school districts would have turned Indians away from public schools. This shortage could have been lethal to the policy of transferring Indians to public schools.[108] Omitting the specific appropriation allowed flexibility to meet demands more justly, although many schools still complained that the rates paid did not meet the actual per capita cost of education to the Indians.[109] The government protected itself against fund shortage by providing in contracts that payments would be made to the extent money was available, a provision which created unrest and fear of lack of payment among the districts.[110] When the States of California, Washington, and Minnesota made contracts under the JOM Act with the Federal Government, the amount the States received was the total of what all the districts in the respective States had been receiving under the tuition payment method specifically authorized in 1914 by Congress for the support of schools enrolling Indians. Simultaneously, most States continued to get funds under the individual contract method. Thus JOM can be seen, at least at first, as merely an administrative change with the same purpose for the allocated money, that is, payment in lieu of taxes.

Historically, the tuition payment system was permeated with problems. A report from the Supervisor of Indian Education after visiting California and Nevada schools portrayed many of the inadequacies. He reported:

> The attendance of Indian children in the public schools is constantly increasing as more schools are made available to them, but many Indian children in Nevada and California are located beyond the reach of public schools. In many communities where public schools are available, Indians are denied admission /sic/. Often this is justified because of their low standards and diseased conditions, but in many other cases it is mere intolerance which keeps them out.[111]

Individual districts put in their requests and rates of tuition were approved ranging from twenty to seventy-five cents a day, without any standards for comparison.[112] The report's evaluation of this system was condemning:

> There does not seem to be any relation between the rate of tuition paid to the public schools and the quality of instruction offered by them. For instance, at Kelseyville the rate is 60 cents a day, while at Nokomis, where a good noon lunch is served and the educational conditions in other respects are far better, the rate is only 35 cents. Both of the River Union schools get 60 cents, yet educational conditions in them are not nearly so good as at Westlake where the rate is 45 cents.[113]

Clearly, the needs of the Indian students had little if any effect on the rate paid, and that the rates were actually the per capita cost of education as generally contended seems doubtful. Furthermore, where only a few Indians were enrolled in a public school, it was impractical to provide them with services such as special lunches, no matter how much they were needed.[114] Isolated Indians were found in fact not to go to public schools for they lacked food, clothing, and incentives and would face discrimination.[115]

Misunderstandings arose in connection with the payment of tuition. The government rarely paid tuition for urban Indians. Commissioner Rhoads explained,

> ... Federal tuition payments for Indian children are in general justified on the existence of preponderating amounts of untaxed Indian land in a school district and the corresponding reduction in the district's revenues for school purposes. The Federal government has not undertaken ordinarily to pay tuition for Indian children or part-Indian children in cities and towns and only rarely have urban communities expected any such aid.[116]

The transition from tuition payments for individual districts to contracts with States came slowly and not without confusion. California and Washington were the only two States to contract for fiscal year 1935. Minnesota contracted for fiscal year 1937, but there was no mad rush for State contracts. Arizona was the only other to contract by 1940.[117]

Thus, the State contract system and the district contract system continued to live side by side. The State contract appropriations were dependent upon what individual districts had previously received and were apparently being governed by the same regulations until new JOM regulations came into effect in May of 1937. No one was recorded in available records procedure enactment as having believed JOM would bring any substantial changes in Indian education except administratively.

The government had long been expected to provide for Indians, and years of payments of Federal money for tuition for Indian children had lulled Indians and whites alike into thinking Federal money was tuition money which had always been paid in lieu of taxes.[118] However, the JOM Act's language was much broader than the language in the appropriations acts which had specifically authorized money for payment of tuition. The JOM Act authorized money "for the education...of Indians." Obviously, this could mean tuition payments for basic education; however, the broader language could include far more. Not surprisingly, much of the State contract money did serve to carry on the previous policy of tuition payments even when a State intended to actually improve the quality of Indian education by the provision of special services, better teachers, and enriched curriculum. Basic support needs of school districts could not be changed overnight with the passage of Federal legislation. School districts with small taxable land bases continued to need money for general operating expenses, that is tuition money.

Perhaps the implementation of the regulations in 1937 can be said to be the point at which the JOM Act really became distinguishable from the tuition payments still being made to individual districts. The two systems, at last, had separate and different regulations. On the other hand, the new regulations were basically a means of shortening the contracts which had been written before and had been presumably affected in their administration by the old regulations concerning only blood quantum and non-taxable land. In 1944 the one-quarter blood requirement became an official JOM regulation.[119] In addition, the BIA manual in 1951 and the 1956 JOM regulations required the presence of large blocks of untaxed land for eligibility, and the 1956 regulations were consistent with the early tuition payment system as to these qualifications.[120] It would seem fair to say that the JOM Act allowed both the continuation of tuition payments and the opening of doors for new educational opportunities for Indians, to be developed as time and conditions allowed. In this way it continued the gradual process begun in the twenties, through which States were intended to take over the education of Indians. Once JOM was enacted, its uses could be expanded as States were willing to accept the changes, and Collier, who had lobbied for the bill as a "most conservative" measure,[121] and others involved, could advocate programs and services far beyond the mere payment of tuition. In accordance with the 1974 regulations, presently with the passing of each fiscal year, an ever diminishing portion of JOM funds goes for basic support, with almost all the money providing special services to enrich Indians' education.

Legislative History of JOM until 1974

Between the 1930's and the 1970's, there were few important years for the legislative history of JOM. In 1951 a BIA Manual made the chief criterion for eligibility,

> the unmet financial needs of school districts related to the presence of large blocks /sic/ of nontaxable, Indian-owned property in the district and relatively large numbers of Indian children which local funds are inadequate to meet.

This criterion, absent in the 1937 regulations, became part of the 1956 revised regulations as well.[122]

Although the language of the BIA did not specifically require that large numbers of Indians live on reservations in order to be the beneficiaries of funding, beginning in 1957 the BIA administered this regulation in a manner which cut off non-reservation Indians from JOM funds.

Thus, the JOM Act, which according to Congressional reports issued just prior to its enactment had been intended to aid the "scattered Indians" while affecting reservation Indians only if they wished, was now limited by the BIA to reservation Indians, with Senatorial approval. Justification included limited appropriations, greater needs of reservation Indians, and the availability of State and local services to Indians who reside off reservations.[123]

This administrative change cutting off large numbers of Indians from assistance, came during a renewed Federal termination effort. In 1953, the House and the Senate passed a resolution calling for termination of Federal services to Indians, and naming specific Indians to be terminated, California Indians included.[124] As a result of this termination policy, JOM assistance was totally withdrawn by 1958 from California. Not until 1970 was JOM assistance restored, and then only in a small amount.[125] A combination of factors led to California's termination--the Congressional termination resolution, the common belief that the new termination policy would lead to termination of all Indian aid and California was as good as first victim as any other State, the claim that California Indians received an adequate education without Federal funds, and the false belief that the new impact aid legislation, Public Laws 874 and 815 would adequately replace JOM funds.[126]

However, PL 874 payments and other income were found insufficient to operate schools in districts composed almost entirely of Indian land, and PL 874 did not account for the high cost of operation in isolated areas populated by Indians, although the Federal government has recognized its special responsibility to meet such costs.[127] Consequently, according to the BIA, all JOM funding in California was not discontinued.[128] The JOM regulations were revised in September of 1958 to make a provision for this overlap by requiring JOM assistance to be limited to "meeting educational problems under extraordinary or exceptional circumstances" in the case of school districts eligible for PL 874 assistance because of Indian impact.[129] Unfortunately, confusion could not be so easily eliminated. Oregon voluntarily terminated its contract under the impression that PL 874 and PL 815 would adequately provide for Indian education and that termination of all services for Indians was imminent anyway. Utah terminated its JOM contract with the hope of getting more money under PL 874 than JOM.[130] Many Indians and others continue to believe today that the criterion for JOM based on non-taxable land is anachronistic because of the PL 874 amendment covering Indian lands.[131]

According to a 1975 BIA progress report on JOM and its regulations, once Indians were transferred to public schools, little attention was given to their educational progress. Even most Indian parents were not sufficiently aware of the educational needs of their children and assumed that if their children stayed in school, "everything would be alright."[132] Until about 1971 the programs for the use of JOM funds were determined almost entirely by BIA and public school officials. In that year locally elected Indian Advisory School Boards began making their wishes known and this resulted in court suits and the NAACP's An Even Chance. Such actions made it clear that special need JOM programs were necessary, relating to financial needs of parents and educational needs of Indian students. It was also clear that the late 1930's theoretical emphasis on special needs programs had in over 30 years no major and lasting impact on the use of JOM funds. The funds were still used for the most part according to the school district's financial needs,[133] although the BIA did report that it budgeted 30 percent of its JOM funds for "special services" in 1969. Unfortunately, there were large problems with special services spending--special services included everything from bus transportation to bus mortgages, volleyball equipment to salary increases for teachers, libraries to study halls. Furthermore, there was no detailed accountability for special services money; thus it could go nearly anywhere.[134]

New regulations finally went into effect on September 20, 1974, bringing several important changes. The regulations are introduced by a statement of purpose emphasizing special educational needs, parental participation and control, and accountability:

> The purpose of this revision is to clarify the rules governing disposition of financial assistance to meet the special needs of eligible Indian children and to define the role of Indian parental participation and control in the development of supplemental education programs for Indian children funded under the authority of the Johnson O'Malley Act.... In addition, this revision will require the participation and control by Indian parents, will delineate specific areas of accountability, and will provide audit and monitoring procedures so that contract funds...can most effectively be used for supplemental programs to enhance the educational opportunities and achievement of the Indian children....[135]

Thus, the JOM Act was finally taking a turn toward providing valuable education for Indians through special services, as had been advocated in the 1930's by the first State contractors and even the BIA itself, according to appropriations hearings.

The new regulations stated specifically that only Indians with one-quarter Indian blood who were members of a recognized Indian tribe would be beneficiaries of JOM funds, as had been the past practice.[136] This was far different from the "scattered Indians" advocated as beneficiaries by the House and Senate Indian Affairs Committee in 1934. However, in one way, coverage of Indian children was expanded, for a new regulation permitted JOM programs for preschool children.[137]

In an attempt to reduce wide variations in per pupil allocations, the regulations provided that funds were to be apportioned among the States "on a substantially equal basis, based upon the number of eligible students for whom funds are sought, with allowance being made for the actual cost of delivering educational services in each State."[138] Funds were further to be distributed to contractors so that each eligible student would have approximately the same per pupil allowance, with the Commissioner enabled to make exceptions based on special community needs.[139] Funds for operational expenditures could be used only to meet educational standards established by the State, if provided for in the State plan, and "only under extraordinary or exceptional circumstances."[140] Four qualifications had to be met by a school district requesting funds for operational expenditures: (1) it had to be unable to satisfy minimum State standards without the funds; (2) it had to make a reasonable tax effort, at least equal to the State average; (3) it had to have utilized all other sources of aid, including PL 874 and a State aid contribution per pupil at least equal to the State average; and (4) it had to have at least 70 percent eligible Indian enrollment within the district or school in question.[141] No JOM funds could go for capital expenditures such as building costs, or for debt retirement.[142]

With respect to Indian control over JOM monies, the Commissioner was to require maximum participation and control by Indian parents, including full veto power over supplementary programs and expenditures for supplementary programs by the Indian Education Committee composed of Indian students' parents. The committee could assess Indian educational needs; participate in negotiations of contracts and planning, evaluating and monitoring of programs; hear complaints; have regular meetings with staff serving the Indian students; hold meetings; have access to school records.[143]

In sum, the major changes created by the 1974 "Red Regs" were as follows:

> (1) JOM funds are not tied to public school systems and can be used in Indian-controlled projects outside public schools, generally in the Indian community.
>
> (2) Indian corporations are specifically authorized to contract for JOM funds.
>
> (3) JOM money is available for children from "early childhood" through twelfth grade. (Early State contracts had authorized expenditures through college and any special school, conceivably public preschools would have been included had there been any.)
>
> (4) Large blocks of tax-exempt land are no longer a criterion, let alone the major criterion, for eligibility for JOM funds. PL 874 is expected to take care of this for the most part.
>
> (5) JOM money for supplemental programs must be approved by local Indian Education Committees, thus allowing parental control.
>
> (6) Tight restrictions are placed on the use of JOM funds for basic support purposes, and expenditures for special educational needs programs were emphasized.[144]

The new regulations were controversial, and in an unusual proceeding, an open public hearing was held by the Senate Subcommittee on Indian

Affairs shortly after the implementation of the 1974 regulations.[145] The express purpose of the hearing was "to take testimony from Indian people, public school officials, and representatives from Indian-interest organizations concerning the Johnson O'Malley rules and regulations adopted by the Department of the Interior on August 16, 1974."[146] Chairman Abourezk presented the main controversy--whether JOM funds are for supplemental and compensatory programs to improve the quality of education for Indian children, or whether they should provide basic operational expenses of Indians and non-Indians in eligible school districts.[147] The new regulations had decided that supplementary programs were the main purpose, while leaving a loophole for basic support.

Several deficiencies of the regulations were pointed out. One major complaint by Indians was that Indians would have no control over JOM funds still used as basic support, with no committee forming to see if there were special needs, and no committee existing unless funds were used for supplementary programs.[148] The interface between PL 874 and JOM generated a number of complaints. The report of the National Indian Leadership Training center pointed out that in Arizona, the State most often cited as an abuser of JOM for basic support, except in the very largest districts, the districts receiving JOM funds receive more money without JOM funds than those which do not receive JOM money. Such districts often get two or three times more money from PL 874 funds because of "Indian impact" than they would from taxes.[149] One witness suggested that if PL 874 could not provide enough money for basic support, it should be changed by the Office of Education, rather than taking JOM funds away from supplementary programs.[150] The 70 percent Indian enrollment eligibility requirement for using JOM funds for basic support was generally condemned as causing hardship and being arbitrary.[151]

As JOM stands today, newly amended by the Indian Self-Determination and Education Assistance Act discussed separately below and awaiting further new regulations, Indian children up to the twelfth grade may benefit from JOM funds, if they have at least one-quarter Indian blood and are members of recognized tribes. Although large blocks of non-taxable land is no longer a requirement of eligibility, the focus is still reservation Indians, their communities, and the public schools they attend. The strong emphasis is on the use of JOM funds for supplementary programs to meet special Indian educational needs, and this is working in practice, with less money spent each year on basic support. In addition, some money still labeled as providing basic support actually goes to keep open all-Indian schools that would otherwise be closed, forcing the Indians to attend nearby, integrated public schools. Thus, such JOM programs can also be seen as supplementary programs because the education by its nature provides something which could not be provided in the public school.[152] Indian Education committees composed of Indian students' parents have veto power and participation rights in connection with all supplementary programs, and because Indian organizations, incorporated or unincorporated, may now contract, Indians can also have virtually complete control over JOM programs, which need not even be school related. It appears legal for both tribal governments and tribal school boards to make contracts, but the BIA has indicated that it believes it should make contracts with the tribal governments.[153] In the light of the new Section 4 of JOM adopted in PL 93-638, JOM funds are now clearly intended to provide aid almost exclusively for Indians. This section provides that when non-Indians participate in programs, the costs shall be prorated so that only Indian participation is paid for by JOM funds.[154]

Summary and Conclusions

It would be futile to argue that one particular phenomenon has served as the impetus for JOM legislation. One common theory is that the Citizenship Act of 1924, granting Federal and State citizenship to all Federally recognized Indians, was the moving force.[155] Citizenship, when coupled with State constitutions, meant that States were legally obligated to provide educational and other services to Indian residents, although the Federal government had traditionally supplied such services because of its unique relationship with Indians. In the year of the Citizenship Act, Commissioner Burke began proposing a complete transfer to the States of services for Indians.[156] Commissioner Rhoads in 1930 proposed a more voluntary route in a memo to the Secretary of the Interior in 1930, saying:

> The time has arrived when States directly interested in the civilization and advancement of Indians should begin to assume a greater degree of responsibility in connection with Indian affairs and especially in matters relating to education, medical care, and relief of indigents.[157]

In his 1931 annual report, however, Commissioner Rhoads was more forceful:

> ... Indian education is in no sense solely a Federal problem, but a State and local problem as well. When Congress in 1924 made all Indian /_s_7 citizens it served notice that Indians could no longer be overlooked in the citizenry of any State.[158]

It has been cynically argued that States' enthusiasm for JOM legislation came from the desire to have the Federal government continue to pay bills for services States were legally and morally obligated to provide.[159]

This economic argument was made less cynically as early as 1923. Even before the passage of the Citizenship Act, States such as Oklahoma and California began seriously considering closer Federal-State cooperation in the education of Indian children.' The Office of Indian Affairs had begun a serious and quite successful enrollment drive in 1921 to increase the number of Indians in public schools; and thus the issue had become pressing. The report of the Commissioner of Indian Affairs for the fiscal year 1923 explained that the effort was increasing the government's tuition costs but saving far more money through reduction in boarding school expenses. Commissioner Burke's insights into the situation may help to explain the push for JOM:

> It is believed that through such conferences in the Indian country a better understanding and cooperation can be secured, particularly in the direction of enrolling Indian children in the public schools which is a rapidly growing movement. The people in a number of States are encouraging it. They are apparently /sic/ anxious to find a solution of the problem before the government transfers it entirely to the States. The government may wisely stress this movement because it means reduced Federal expense and the kind of education provided for all American children. This trend toward State school facilities removes almost entirely the need of new government schools.[160]

Similarly, Commissioner Rhoads in his 1929 Annual Report stated:

> .... The States and the local public-school districts appear to be generally in sympathy with the plan of education by the States, conditioned, however, upon such financial assistance as they need and as the Federal government can offer.[161]

Thus, the economic motive on the part of both State and Federal governments appears to have had a fundamental role in the search for Federal-State cooperation. The Federal government acted to save itself money and the States worked to keep their costs from increasing at all by having the Federal government continue to pay the greatly reduced overall bill. It is noteworthy, however, that Commissioner Burke also seemed to believe that the Indian children would get a better education under the public school system--the kind provided for "all American children." In the early twenties, Secretary of the Interior Work also had the Indian children's welfare in mind, as the mottos for his enrollment campaign were "Every eligible Indian child in school every day" and "Every Indian school filled to its limit."[162]

In addition to the research undertaken for this report, a decision was made to seek expert opinion of the Congressional intent of the Johnson O'Malley Act. Wayne Pratt, who retired in 1965, after thirty-two years with the BIA, including twelve years of guiding the administration of the JOM Act for the entire country, was interviewed. He believes that because there was so little expression of Congressional intent, Congress expected the Bureau to lead the way. Because the Bureau can only spend money appropriated by Congress, he believes it is proper to assume that what the BIA did was in harmony with Congress or Congress would not have appropriated the money. Pratt interprets the intent of JOM when enacted as being aimed at helping school districts, not Indians per se. He explains that there were hundreds of Indian students near public schools in the thirties, but the public schools could not enroll Indians because most Indians paid no property taxes. JOM made it possible to consolidate the education of children, Indians and whites, in fewer schools. Pratt says this can be seen from early State plans for use of JOM funds; they were plans to educate all children, not focused on Indian children. However, to qualify for funds, a school district had to have a tax-exempt land problem which was Indian related.[163] The theory that the BIA rather than Congress made Indian policy in the thirties, particularly in reference to the movement toward public schools which was facilitated by JOM, was raised in heated debate in the appropriations hearings concerning Indian education for fiscal year 1936.[164]

The analysis of Congressional intent of John Wade, the present Division Chief of the Division of Educational Assistance of the BIA, is consistent with that of Pratt. Wade believes Congress in enacting JOM intended to allow schools in addition to BIA schools to educate Indians. The Congress saw that the Indians were scattered throughout the west and felt a need to provide them with services, including basic education. Believing the BIA did not have the capability to care for all the scattered Indians, it decided to allow contracts with States in an attempt to cure the deficiencies. The original intent of the act thus was to aid public schools educating Indians. Wade finds this to be a bad usage of JOM because JOM came to be seen only as a public school assistance program, consequently creating problems of limiting uses of JOM funds, when now the intent of JOM is seen as assisting Indians in public schools.[165]

Senator James Abourezk, present chairman of the Senate Subcommittee on Indian Affairs, in hearings on the Indian Self-Determination and Educational Assistance Act conducted in 1973, described the intent of JOM as follows:

> It is clear through the legislative history of JOM that the 1934 Act was never intended to strengthen the local Indian communities but to provide a mechanism for assimilation of the Indian people into the mainstream of society.[166]

An Even Chance, a well-known study of Indian education programs, said the Johnson O'Malley Act was designed to accomplish three things:

> to get the Federal government out of the business of educating Indian children; through financial inducement, to further the long-established practice of turning over responsibility for Indian education to the States and local districts; to "civilize" Indians,

> the historical goal of Federal Indian legislation. It was thought that in public schools "daily contact with white children would facilitate their civilization and through them contribute to the enlightenment of adult Indian parents."[167]

In a sense, there is truth in all of the "intents of Congress" cited above. As this analysis revealed, a number of themes emerged as part of the Congressional intent, some of them contradictory, with the importance of each changing--growing, receding, re-emerging--throughout the history of the JOM Act. There were honorable intents--to meet the needs of scattered and often destitute Indians; to provide Indians at least a basic education at the nearest school through tuition payments to the school district; to get Indian children out of boarding schools and nearer their own families; to provide special services and special courses to meet specific needs of Indians; originally to affect Indian communities only when they wished to be involved in JOM; and recently to strengthen tribal communities through JOM programs. There were underlying economic motives, sometimes selfish, other times highly practical--the desire of States for a system through which the Federal government would pay the bills for services they were legally and morally obligated to provide for their citizens; the desire of States to ensure that Indians would become self-supporting rather than dependent on State welfare; the simple desire of local school districts to have more "tuition money" to make a larger general school fund for use as they pleased; the desire of the Federal government to cut its costs through using State facilities to serve Indians rather than duplicating them; the wish to provide a cheaper educational system for Indians especially when BIA budget cuts forced by the Depression necessitated lower costs. There were administrative motives--to decentralize the administration of services so that they could be more responsive to varying needs; to simplify the old contracting system in which hundreds of individual districts had contracted directly with the Federal government and sometimes even received separate appropriations; to pass the burden of the "Indian problem" to the States while simply paying the bill, this being an internally contradictory motive--to accept responsibility existing because of the special relationship of the Indians and the Federal government by simply passing it on. There was conceivably a political motive--to cut the influence and power of the BIA. There was the obvious ethnocentric motive--to "civilize" the "Red Man," followed more recently by the contradictory efforts to preserve Indian culture, both through the same act, but at different times. The consistency that can be found in this tangle of motives is that the purposes and uses of JOM are always evolving as dictated by the realities of the conditions and the times, to fill the gaps in Indian education most needed to be filled at the moment. Thus JOM could logically be used for the most minimal basic education in the thirties and the most supplementary, specially designed programs in the seventies. And this seems altogether fitting and proper, for the JOM legislation was intended to be experimental, and thus open-ended.

Notes to the Johnson O'Malley Act

1. Johnson O'Malley Act, April 16, 1934, 48 Stat. 596, 25 U.S.C. 452-56.
2. Act of June 4, 1936, 49 Stat. 1458-59, 25 U.S.C. 452-56.
3. Indian Self-Determination and Educational Assistance Act, Jan. 4, 1975, 88 Stat. 2203, 25 U.S.C.
4. Johnson O'Malley Act, *supra* note 1, at 1 (emphasis added).
5. Snyder Act, Nov. 2, 1921, 42 Stat. 208, 25 U.S.C. §13.
6. Act of June 4, 1936, §1, 49 Stat. 1458, 25 U.S.C. 452, *amending* 48 Stat. 1458, 25 U.S.C. 452 (emphasis added).
7. *Id.*, §2-5, 49 Stat. 1458-59, 25 U.S.C. 453-56.
8. Public Law 83-674, 68 Stat. 674, Aug. 5, 1954, transferred health services from the Department of Interior and the BIA to the Public Health Service under HEW, which could in turn transfer these services to the State. Public Law 86-533, 74 Stat. 248, §15, June 29, 1960, repealed Section four of the JOM Act so that annual reports to Congress are no longer required. With the exception of the recent Public Law 93-638, which will be discussed separately, these were the only other amendments to the Johnson O'Malley Act.
9. S. 2571, 73d Cong., 2d Sess. (1934).
10. 78 Cong. Rec. 4878 (1934).
11. S. Rep. No. 511, 73d Cong., 2d Sess. 1-2 (1934).
12. *Id.* at 2.
13. Letter from Harold L. Ickes to Burton K. Wheeler, Mar. 19, 1934, reprinted in S. Rep. No. 511, 73d Cong., 2d Sess. 2-3 (1934).
14. H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).
15. 69th Cong., 1st Sess. (1926).
16. 69th Cong., 1st Sess. (1926).
17. 69th Cong., 2d Sess. (1927).
18. *Hearings on S. 3020 § S. 3611 and S. 5498 Before a Subcommittee of the Senate Commission on Indian Affairs*, 69th Cong., 2d Sess. (1927).

19. 70th Cong., 1st Sess. (1927).

20. 70th Cong., 2d Sess. (1928).

21. 71st Cong., 2d Sess. (1930).

22. *Id*.

23. 72d Cong., 1st Sess. (1931).

24. 72d Cong., 1st Sess. (1932).

25. *Hearings on the Interior Department Appropriations Bill for 1935 Before the Subcomm. of the House Comm. on Appropriations*, 73rd Cong., 2d Sess. 548, 553 (1934).

26. *Hearings on the Interior Department Appropriations Bill for 1936 Before the Subcomm. of the House Comm. on Appropriations*, 74th Cong., 1st Sess. 866 (1935) /hereinafter cited as *Hearings for 1936*/.

27. *Hearings on Interior Department Appropriations Bill for 1937 Before a Subcomm. of the House Comm. on Appropriations*, 74th Cong., 2d Sess. 949 (1936) (emphasis added) /hereinafter cited as Hearings for 1937/.

28. *Hearings on Interior Department Appropriations Bill for 1938 Before the Subcomm. of the House Comm. on Appropriations*, 75th Cong., 1st Sess. 1136 (1937) (emphasis added).

29. *Hearings for 1937*, *supra* note 27, at 932.

30. *Hearings for 1936*, *supra* note 26, at 864.

31. *Id*. at 866, 869.

32. *Id*. at 869.

33. *Hearings for 1938*, *supra* note 28, at 1165.

34. *Id*.

35. S. Rep. No. 511, 73d Cong., 2d Sess. 2 (1934); H. Rep. 864, 73d Cong., 2d Sess. 2 (1934).

36. 75 Cong. Rec. 9405-06 (1932).

37. Letter from Harold L. Ickes to Will Rogers, Chairman of the House Committee on Indian Affairs, March 13, 1935, in RG 48, No. 5-11 (emphasis added).

38. Letter from Samuel H. Thompson, Supervisor of Indian Education, to John Collier, Jan. 20, 1936, NA, RG 75, Central Files, 1907-39, BIA, Series 803, No. 18862 /hereinafter this National Archives source will be cited by record group number and file number/. (emphasis added)

39. Letter from John G. Rockwell, Commissioner of Education, *et al.*, to Teachers and School Officials of Indian Schools, Sept. 18, 1936, in RG 75, No. 61017.

40. Contract entitled "Education of Indians in California," Sept. 1, 1934, in NA, RG 75, Central Files, 1907-39, BIA, Series 803, No. 18862 /hereinafter cited California Contract, Sept. 1, 1934/.

41. *Id.*

42. *E.g.*, see Interoffice BIA Memorandum from G. A. Collins to A. C. Monahan, Assistant to the Commissioner, Acting Director of Education, annotated by Paul L. Fickinger, Assistant Director of Education, and Dodd, June 17, 1935, in RG 75, No. 18862.

43. Hearings Pursuant to S. Res. 79, Entitled "Survey of Conditions of the Indians in the United States," Before a Subcomm. of the Senate Comm. on Indian Affairs, 70th Cong., 2d Sess., through 78th Cong., 1st Sess., (1927-43) in 2d Sess., pt. 2 at 591.

44. California Contract, Sept. 1, 1934, *supra* note 40, §6A

45. *See* Memorandums from G. A. Collins to Mr. Monahan, June 11, 1935, and June 17, 1935, in RG 75, No. 18862.

46. Letter from O. H. Lipps, Superintendent of Sacramento Indian Agency to Dr. W. Carson Ryan, Apr. 23, 1934, in RG 75, No. 18862.

47. *Id.*

48. Letter from Samuel H. Thompson, BIA Supervisor of Indian Education, to A. C. Monahan, Assistant to the Commissioner and Acting Director of Education, May 20, 1935, in RG 75, No. 18862.

49. *Id.*, June 14, 1935.

50. Letter from Vierling Kersey, California Superintendent of Public Instruction, to County Superintendent of Schools, Sept. 24, 1935, in RG 75, No. 18862.

51. *Id.*, Nov. 6, 1935, No. 18862.

52. *Id.*

53. Letter from Vierling Kersey to Paul L. Fickinger, Assistant Director of Education, Dec. 26, 1935, in RG 75, No. 18862.

54. California Contract, Sept. 1, 1934, *supra* note 40.

55. For a discussion of this clause, see the memorandums from G. A. Collins to A. C. Monahan, June 11 and 17, 1935, *supra* note 45.

56. Letter from O. H. Lipps to Paul L. Fickinger, Assistant Director of Education, Aug. 13, 1935, in RG 75, No. 18862.

57. Letter from Vierling Kersey to Willard Wolcott Beatty, Director of Education, BIA, Feb. 10, 1936, in RG 75, No. 18862.

58. Brief Statement on Indian Education in California, January 1, 1937, in RG 75, No. 18862 [hereinafter cited as Education in California].

59. Report of Educational Activities for Indian Children Attending Public Schools in the State of California, 1934-35, presented by Vierling Kersey, Superintendent of Public Instruction, Jan. 25, 1936, in RG 75, No. 18862.

60. *Id.*

61. *Id.*

62. *Id.*

63. Education in California, *supra* note 58.

64. Letter from Homer L. Morrison, Washington Superintendent of Indian Education, to John Collier, Jan. 25, 1937, in RC 75, No. 42133.

65. Memorandum from Paul L. Fickinger, Nov. 5, 1934, in RG 75, No. 42133.

66. Untitled Report for the Fiscal Year 1935-36, Johnson O'Malley Contract, for the State of Washington, Aug. 23, 1936, at 3, submitted by Homer L. Morrison, Superintendent of Indian Education, to the Commissioner of Indian Affairs, RG 75, No. 42133.

67. *Id.*, at 4.

68. *Id.*

69. Letter from Homer L. Morrison to John Collier, *supra* note 64.

70. Letter from Samuel H. Thompson, Supervisor of Indian Education, to John Collier, undated, in RG 75, No. 42133.

71. Memorandum from John G. Rockwell, Minnesota Commissioner of Education, *et al.*, to Teachers and School Officials of Indian Schools, Sept. 18, 1936, in RG 75, No. 61017.

72. Letter from Ames M. Shields, Minnesota Supervisor of Indian Education, to Willard W. Beatty, BIA Director of Indian Education, Dec. 30, 1936, in RG 75, No. 61017.

73. Report on Operation of Federal Contract for Education of Indians in the State of Minnesota during School Year Closing June 30, 1937, submitted by O. R. Sande, Director of Indian Education, et al., Sept. 7, 1937, in RG 75, No. 61017.

74. Rockwell Memorandum, supra note 71.

75. Shields letter to Beatty, supra note 72.

76. Minnesota Report for Fiscal Year 1937, supra note 73.

77. Letter from Samuel A. Thompson to John Collier, Jan. 20, 1936, in RG 75, No. 18862.

78. Letter from William Zimmerman, Jr., to Dr. Sophie D. Aberlee, United Preblos Agency, Albuquerque, N.M., Jan. 3, 1936, in RG 75, No. 35931.

79. Letter from John Collier to Hon. Mon C. Wallgren, June 25, 1925, and to Hon. Sam B. Hill, Oct. 4, 1935, in RG 75, No. 42133.

80. Letter from Samuel H. Thompson to Willard W. Beatty, May 4, 1936, in RG 75, No. 61017.

81. Memorandum from G. A. Collins to A. C. Monahan, June 11, 1935, in RG 75, No. 18662.

82. Letter from W. Carson Ryan to Mr. Elkus, Aug. 2, 1934, in RG 75, No. 18862.

83. Memorandum from O. H. Lipps to Paul L. Fickinger, Aug. 13, 1935, in RG 75, No. 18862.

84. Letter from Samuel H. Thompson to A. C. Monahan, May 20, 1935, in RG 75, No. 18862.

85. Id., June 14, 1935.

86. Letter from G. A. Collins to A. C. Monahan, June 17, 1935, in RG 75, No. 18862.

87. Note from Paul L. Fickinger to A. C. Monahan on letter from G. A. Collins to A. C. Monahan, June 17, 1935, in RG 74, No. 18862.

88. Letter from Homer L. Morrison to A. C. Monahan, Nov. 16, 1935, excerpted and reprinted in RG 75, No. 42133.

89. Letter from Samuel H. Thompson to John Collier, Feb. 5, 1936, in RG 75, No. 42133.

90. Letter from John Collier to Burton K. Wheeler, Apr. 24, 1934, in RG 75, No. 18862.

91. Letter from A. C. Monahan to Dr. Walter M. Dickie, California Director of Public Health, Dec. 27, 1935, in RG 75, apparently misplaced in No. 42133. Note that Monahan here accepted the use of education funds for health needs.

92. Letter from W. Carson Ryan to Mr. Elkus, Aug. 3, 1934, in RG 75, No. 18862.

93. Letter from O. H. Lipps to Paul L. Fickinger, Aug. 13, 1935, in RG 75, No. 18862.

94. Letter from B. S. Garber, Acting Commissioner, to Carl M. Moore, Supervisor of Indian Education, July 8, 1932, in RG 75, No. 30171.

95. 2 Fed. Reg. 1033-34 (1937). These regulations were published on June 16, 1937.

96. Id. at 1033, No. 8.

97. Letter from Raymond H. Bitney, Superintendent of Red Lake Indian Agency, Minn., to the Commission of Indian Affairs, May 11, 1936, in RG 75, No. 61017.

98. Letter from C. J. Burke, Commissioner of Indian Affairs, to A. B. Titus and Senator Lynn T. Frazier, Dec. 10, 1931, in RG 75, No. 67979.

99. Letter from W. Carson Ryan, Director of Education, to N. D. Showalter, Washington Superintendent of Education, Sept. 15, 1931, in RG 75, No. 48424.

100. Id.

101. Letter from B. S. Garber, Acting Commissioner, to Carl M. Moore, July 8, 1932, in RG 75, No. 30171.

102. Appropriations Act of Aug. 1, 1914, 38 Stat. 582.

103. Letter from C. J. Rhoads, Commissioner of Indian Affairs, to Hon. Henry E. Barbour, Dec. 15, 1931, in RG 75, No. 67489.

104. Memorandum of the American Defense Association, Inc. by John Collier, entitled "A Bill for State Cooperation in Indian Health, Education and Relief," in 72 Cong. Rec. 4205-06 (1930), and in RG 46, Records of the U.S. Senate, 72d Cong., S. 3110 general bill file (emphasis added).

105. Letter from Homer L. Morrison to the Commissioner of Indian Affairs, Aug. 23, 1936, in RG 75, No. 42133.

106. Id.

107. Hearings on Interior Department Appropriations Bill for 1933 Before the Subcomm. of the House Comm. on Appropriations, 73d Cong., 1st Sess. 431 (1932).

108. *Id*.

109. Memorandum of the Director of Education to Mr. Dodd, March 24, 1932, in RG 75, No. 15955.

110. *Appropriations Hearings for 1933*, *supra* note 107 at 435.

111. Letter from John H. Holst to the Commmissioner of Indian Affairs, Mar. 10, 1929, in RG 75, No. 17079.

112. *Hearings on Interior Department Appropriations Bill 1935 Before the Subcomm. of the House Comm. on Appropriations*, 73d Cong., at 547.

113. California-Nevada Proposal, *supra* note 111.

114. *Hearings on Interior Department Appropriations Bill 1935 Before the Subcomm. of the House Comm. on Appropriations*, 73d Cong. 2d Sess. 552 (1934).

115. *Id*.

116. Letter from C. J. Rhoads, Commissioner of Indian Affairs, to Hon. Wesley E. Disney, Apr. 20, 1933, in RG 75, No. 64104.

117. Felix S. Cohen, *Handbook of Federal Indian Law* 241 (1940).

118. *See* Brief Statement on Indian Education in California, Jan. 1, 1937, at 3, in RG 75, No. 18862.

119. Fed. Reg. 13453 (Nov. 10, 1944).

120. The January, 1956, regulations contained the one-quarter Indian blood requirement and a requirement of creation of financial need by large blocks of non-taxable Indian-owned property in the district or relatively large numbers of Indian children. §44.4 Fed. Reg. 628 (Jan. 28, 1956). This regulation was amended in December of 1956 to require both large blocks of nontaxable Indian owned property *and* relatively large numbers of Indian children. §44.4(b) Fed. Reg. 9565 (Dec. 4, 1956). In December of 1957, part 44 on Enrollment of Indians in Public Schools was redesignated as part 33. Part 33, Fed. Reg. 10533 (Dec. 24, 1957).

121. *E.g.*, *see* John Collier, Executive Secretary, and Haven Emerson, President, American Indian Defense Association, to the Editor of the New York Times, April 27, 1930, in RG 48, No. 5-11.

122. 25 C.F.R. §33.4(b) (1957).

123. Letter from Louis R. Bruce, Commissioner of Indian Affairs, to John Tsatoke, Oct. 23, 1969, in *An Even Chance*, *supra* note 122, at 12.

124. H. Con. Res. 108, 83d Cong., 2d Sess. (1953).

125. *An Even Chance*, *supra* note 122, at 12; S. Rep. No. 91-501, 91st Cong., 1st Sess. 42 (1969). This report is the well-known Kennedy Report, entitled, "Indian Education: A National Tragedy--A National Challenge" [hereinafter cited as *A National Tragedy*].

126. *A National Tragedy*, *supra* note 125, at 42..

127. Letter from John Kyl, Assistant Secretary of the Interior to Sen. Henry M. Jackson, Aug. 3, 1973, in BIA, *Assistance to Indians Enrolled in Public Schools: Johnson O'Malley Regulations--A Progress Report 73* (1974) [hereinafter cited as *BIA Progress Report*]

128. *Id*. at 1.

129. 23 Fed. Reg. 7106 (1958); 25 C.F.R. §33.4(c).

130. *A National Tragedy*, *supra* note 125, at 42.

131. *Hearings on Rules and Regulations for the Administration of the Johnson O'Malley Act Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior & Insular Affairs*, 93d Cong., 2d Sess. 34 (1975) [hereinafter cited as JOM Administration Hearings].

132. *Id*.

133. *Id*., at 2.

134. *A National Tragedy*, *supra* note 125, at 40.

135. 25 C.F.R. pt. 33.

136. 25 C.F.R. §33.1(g).

137. 25 C.F.R. §33.2(a).

138. 25 C.F.R. §33.2(c)(1)(i).

139. 25 C.F.R. §33.2(c)(1)(ii).

140. 25 C.F.R. §33.2(c)(2).

141. *Id*.

142. *Id*.

143. 25 C.F.R. §33.2(d).

144. *JOM Administration Hearings*, *supra* note 131, at 46 (statement of John Wabaunsee, attorney with NARF).

145. *JOM Administration Hearings*, *supra* note 131.

146. *Id*., at 1.

147. *Id.*

148. *JOM Administration Hearings*, *supra* note 131, (*see* testimony of Ladonna Harris, President of Americans for Indian Opportunity, at 9; Edward Red Owl, Sisseton Wahpeton Sioux Tribe Education Board at 17; Myron Jones, Director of Indian Education Training, Inc., at 36).

149. *Id.*, at 37-39.

150. *Id.*, at 44 (testimony of John Wabaunsee, attorney with NARF).

151. *Id.*, e.g. at 21 (testimony of Robert Burneth, President of Rosebud Sioux Tribal Council).

152. Interview with John Wabaunsee, attorney with the Native American Rights Fund (NARF), in Washington, D.C., July 9, 1975.

153. Interview with John Wade, BIA Division Chief of the Division of Educational Assistance, in Washington, D.C., July 10, 1975.

154. Indian Self-Determination and Education Assistance Act, Jan 4, 1975, 88 Stat. 2203.

155. Act of June 2, 1924, 8 U.S.C. 3, 43 Stat. 253, *amended* 54 Stat. 1173 (1940). *E.g.*, *see* memorandum from Trish Nemore to Graeme Bell, entitled "Legislative History of the Johnson O'Malley Act," Aug. 29, 1972. /This study is available from NARF, and will be hereinafter referred to as Nemore Memorandum/.

156. Annual Report of the Commissioner of Indian Affairs, 1924, in *Hearings on S. 3020, S. 3611, & S. 5498 Before a Subcomm. of the Senate Comm. on Indian Affairs*, 69th Cong., 2d Sess. 7 (1927).

157. Memorandum from C. J. Rhoads to the Secretary of the Interior, Feb. 27, 1930, in Nemore Memorandum, at 6.

158. Annual Report of the Commissioner of Indian Affairs, 1931, at 7.

159. 75 Cong. Rec. 9405-06 (1932).

160. Annual Report of the Commissioner of Indian Affairs, 1923, at 3-4 (emphasis added).

161. *Id.*, 1929, at 5 (emphasis added).

162. Report of the Secretary of the Interior, 1923, at 36.

163. Telephone interview with Wayne Pratt, former BIA official, July 8, 1975.

164. Appropriations Hearings for 1936, *supra* note 26, at 892.

165. Wade interview, *supra* note 153.

166. *Hearings on the Indian Self-Determination and Education Program Before the Subcommittee of the Senate Comm. on Interior and Insular Affairs*, 93d Cong. 1st Sess. 1 (1973).

167. *An Even Chance*, *supra* note 122, at 21.

IMPACT AID: PL 874 and PL 815

Public Law 81-874 - Federal Assistance for Maintenance and Operations of Public Schools as Related to Indians.

Introduction

Public Law 874,[1] was enacted September 30, 1950, to provide financial assistance to local educational agencies for the operation and maintenance of schools in areas affected by Federal activities. Enacted one week after Public Law 81-815, which provided financial assistance for the construction of schools, these complementary bills are commonly known as Impact Aid. Financial assistance under PL 874 was based on a formula which took into consideration three categories of Federally connected children and provided different rates of payment, which varied according to the degree of impact. Under PL 815, as originally enacted, Indians could technically be counted in determining the amount of Federal assistance, but under PL 874 Indians were completely excluded until a 1953 amendment.

PL 874 was designed to compensate communities for the impact of military bases, housing for military personnel, defense industries, and experimental stations, which were a necessary result of mobilization for World War II. Such Federal activities removed real property from local tax bases and often simultaneously caused a sudden and substantial increase in population, resulting in a strain on the ability of affected communities to provide public education for all the students. In response to the impact of the Federal presence, Congress, in 1941, enacted the Lanham Act to provide Federal assistance to communities, including construction, operation and maintenance of public schools. The Lanham

Act, however, was a war measure, and was discontinued as quickly as possible after the war ended. Unfortunately, readjustment to peacetime conditions came either slowly or not at all in some instances. With the nation facing another conflict, the Korean War, and school districts continuing to be overburdened as a result of war activities, Congress was forced to abandon its thoughts of ending Federal aid in the near future.

In the words of the Senate Report accompanying H. R. 7940, the bill which became PL 874,

> ...the United States had become an industrialist, a landlord, or a businessman in many communities of the Nation without accepting the responsibility of a normal citizen in a community, because the property under Federal ownership or control generally is not subject to local taxation.[2]

The Impact Aid laws were a step toward accepting that responsibility and providing a consistent Federal policy administered by one rather than many agencies as in the past.

A study for the Senate Committee on Appropriations, entitled "Education of Children Living on Federal Reservation and in Localities Particularly Affected by Federal Activities," was probably a contributing factor to the omission of Indians from PL 874 coverage. Recognizing that Indians are Federally-connected, the 1949 report described Indian education and its sources of financing--the Federal schools, the private mission schools, and contracts with individual public school districts and whole states under the Johnson-O'Malley Act. It told vaguely of funds appropriated for special services for Indians attending schools without tuition contracts, and said that the Federal government frequently appropriated money for enlargement or reconstruction of public school facilities accommodating Indians. In sum, the report's apparent theme was that the government already had adequate authority to provide for Indian education.[3]

Description of the Law

Section 1 of PL 874, 64 Stat. 1100, sets forth the policy statement. It reads:

> ...the Congress hereby declares it to be the policy of the United States to provide financial assistance ...for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that--
>
> (1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or
>
> (2) such agencies provide education for children residing on Federal property; or
>
> (3) such agencies provide education for children whose parents are employed on Federal property; or
>
> (4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.[4]

Section 2 of the act provided that when the United States acquired additional property in a district after 1938, equal in value to ten percent or more of the total value of the district's real property, causing a substantial and uncompensated financial burden, the local educational agency would be entitled to an amount equal to the Federal responsibility. Indian reservations had been established too early to qualify under this section. Section 4 furnished compensation when the establishment or reactivation of a Federal activity caused a sudden increase in school attendance, a substantial burden with which the district could not cope financially.

Section 3 was the most important section, and is the one under which Indians are now counted. Subsections 3(a) and 3(b) defined the categories of children to be used in determining a local educational agency's entitlement. 3(a) children were those who resided on Federal property and had a parent employed on Federal property. 3(b) children were those who either resided on Federal property, or resided with a parent who was employed on Federal property. To determine the amount of entitlement, the number of 3(a) children in average daily attendance (ADA) was multiplied by the "local contribution rate" per child and the number of 3(b) children in ADA was multiplied by one half the local contribution rate. 3(c) explained that the local contribution rate would be based on the expenditures of comparable school districts in the State, normally those unaffected by Federal activities.[5] The rationale for the one-half rate for 3(b) children was that approximately half of the real property tax revenue used for school expenses came from taxation of residential property, and half from commercial property.[6]

To be eligible for payment under 3(a) or 3(b), subsection 3(d) provided that the number of such children had to be at least ten and at least three percent of the ADA for the year in question. The three percent requirement was waivable under exceptional circumstances. Districts with more than 35,000 children in ADA needed six percent to be eligible and had to absorb three percent. These eligibility requirements were to eliminate payments for negligible Federal effects.[7] The effect of Section 3 was to compensate for loss of local but not State revenues. States were assumed to be large enough to adjust to Federal impact.[8]

Although thus far it would appear that Indian children could be either 3(a) or 3(b) children, it is important to note that the act excluded them. Section 2 provided that other Federal payments in lieu of taxes or made with respect to Federal property (e.g., Johnson-O'Malley payments), would be deducted from 874 payments, undoubtedly leaving a sum zero total. Section 3, subsection (g), also required the deduction of "other Federal payments," including JOM money. Section 9(2) completely excluded officially recognized Indian children from the act, for it defined child to exclude children "eligible" for educational services under a U.S. grant, contract, or other arrangement with the BIA. Once again PL 874 and JOM could not provide funds for the same children, and it was of little consequence that the definition of "Federal property" expressly included "real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States."[9]

First Amendment to PL 874 Affecting Indians

PL 83-248 - Governors' Choice Between PL 874 and JOM

PL 83-248, enacted August 8, 1953, amended PL 874 and significantly affected Indians. This law added a vaguely worded Section 10 to PL 874 which allowed each State Governor to choose whether or not PL 874 would apply with respect to the education of Indian children. When a Governor chose to have PL 874 apply, he had to serve proper notice to the Commissioner of Education and to the Secretary of Interior, because JOM funding would be affected.

This amendment caused difficulty because it did not specify how JOM payments would be affected; clearly subsection 3(a) of PL 874 required at least a reduction if not an elimination of those JOM payments.

The amendment also provided that under PL 874 an Indian child who did not meet the requirements of 3(a) because his parents were not employed on Federal property would be deemed a 3(a) child if neither of his parents was regularly employed on non-Federal property. In short, a child whose parents were unemployed could be counted as a 3(a) child. Or a Indian child could be a 3(b) child if he had a parent employed on non-Federal property. Furthermore, the definition of child according to this new Section would include Indian children, according to the BIA definition of Indian, that is, a child with one-fourth or more Indian blood and membership in a Federally recognized Indian tribe. The amendment went into effect in fiscal year 1955.

Congressional Reports

The House and Senate reports help clarify the confusion over the relationship with JOM. The Senate report on H. R. 6078 explained that Section 9 (2) of the law excluded all those eligible for educational services provided through the BIA. At that time the BIA was operating a program of financial assistance through JOM local educational agencies providing free public education to Indians. The report commented that the JOM program "in most respects parallels the program established under PL 874."[10] It said the purpose of the Section 10 amendment was "to shift from the Bureau of Indian Affairs to the Commissioner of Education responsibility for making payments to local educational agencies to help meet general educational costs involved in providing education to these children." The report continued, "..nor would the amendments diminish the BIA's authority to make payments to State educational agencies for school lunches, special transportation expenses, special instructional services, and other services undertaken specially on behalf of the welfare or education of

Indian children which are outside the contemplated purview of Public Law 874 payments."[11] Thus, the Senate Committee on Labor and Public Welfare contemplated that even when a governor chose to include Indian children under Section 3 of PL 874, JOM contracts to such States would not have to be discontinued altogether.

The House report should not necessarily be interpreted to have the same meaning as expressed in the Senate report. This report said:

> It is the purpose of this amendment to permit States which exercise their option, to become eligible to receive Public Law 874 payments with respect to their Indian children in lieu of educational payments under the Johnson-O'Malley Act. It is not intended that the exercise of such option shall preclude or in any way effect the eligibility of the electing State or any of its political subdivisions to participate in the Johnson-O'Malley program as respects health, welfare, or other non-educational services.[12]

It seems the Senate would allow some educational services to continue to be rendered under JOM, but the House would substitute PL 874 for any and all educational services. The House committee noted that the Department of Health, Education and Welfare proposed, with the support of the Department of the Interior, to end all payments to schools under JOM and substitute PL 874 for JOM. The House Committee did not support this proposal however, because (1) there could be no definite assurance that every local school district in every State would benefit financially from the proposed shift, and (2) there was not assurance that PL 874 could be sufficiently flexible to cover the actual educational needs of every Indian child now served by JOM on a needs basis. Rather than suspending JOM for all States, the House Committee on Education and Labor recommended that each State through its Governor be permitted to elect coverage of Indian children under PL 874. States not electing PL 874 "continued to be eligible for Johnson-

O'Malley payments and ineligible for Public Law 874 payments with respect to such children."[13] In sum, the House Committee seemed to think a State could get PL 874 or JOM money for educational purposes, while the Senate believed a State could get Public Law 874 money for basic educational support and JOM money for special services, including special educational services. The House version was ultimately adopted.

Hearings - The BIA Position.

The Bureau of Indian Affairs made it clear that when a State opted for PL 874 coverage of Indians, it would get no JOM contract, not even for special services, apparently regardless of whether or not the legislation permitted a State to receive PL 874 money and JOM money at the same time.[14]

The BIA as a matter of policy was against continuing to provide JOM special services in addition to PL 874 general education services because it would be "very difficult, administratively, to have two Federal agencies...having relationships with a State or a local district...on the same problem."[15]

Opponents of PL 874 Amendment

In 1952, a meeting of Indian educational representatives from the twelve States with the largest Indian education problems unanimously adopted a resolution endorsing the coverage of Indians under PL 815 and JOM, but not PL 874. The resolution said,

> that Indian education within all States having a contract under the Johnson-O'Malley Act of 1934 will continue under this act. It is further resolved that

> the original act, Public Law 874, and its proposed amendments should not include Indian children as they constitute a special problem over and above that of a purely financial nature.[16]

Opponents to the PL 874 amendment to include Indians included State Indian education supervisors who represented their respective State departments of education. These and others who protested this amendment to PL 874 pointed to several problems. (1) There was no eligibility requirement under JOM as under PL 874, and 50 percent of the districts which JOM had helped had less than ten Indians and would consequently not be eligible for PL 874 aid. Such small schools often needed the help most. (2) JOM payments were based on need rather than on a formula, and thus the practice under which one Indian student could get an especially large amount of aid if needed would be stopped. (3) JOM followed Indians who were transient and PL 874 would not do this adequately. (4) JOM with its contracts allegedly getting better each year was much more flexible than PL 874, whose main source of flexibility was a waiver provision for eligibility requirements. (5) JOM dealt with Indians in their special relationship as wards of the Government, while PL 874 would lump them into Impact Aid, losing the special interest in welfare of the Indian children. (6) PL 874 was subject to an expiration date while JOM had none. (7) It was feared that loss of JOM would take away the BIA's bargaining power to get children out of Federally operated day schools and into public schools. (8) Impersonal distribution of Federal aid under PL 874's formula would not produce the close-working relationship which sometimes existed under JOM between school districts, State departments of education and the BIA. (9) PL 874 redtape was feared. (10) School lunch programs would be forced to close, many health needs would not be provided. (11) Funds already allocated under PL

874 did not meet the needs and were being prorated; presumably adding Indians would exacerbate this problem. (12) Large schools with many Indians might not have a large enough percentage to be eligible, and if eligible, the first three percent would have to be absorbed, thereby receiving no allocation.[17]

Office of Education Position

The Office of Education wished to include Indians under PL 874 "in accordance with national policy to incorporate the Indian population into the normal patterns of American life.[18]

No completely satisfactory numbers could be provided on the number of Indian children who would be covered, but in general the Indians then receiving JOM money who would be switched to PL 874 lived on Federal property with parents unemployed or self-employed, and thus they would be 3(a) children. Oklahoma and Oregon however had many Indians employed off Federal property, and in New Mexico few children were covered by JOM but more than 1000 would qualify for PL 874 funding.[19] The Office of Education admittedly found a direct comparison of the two programs to be difficult, and with this in mind was unwilling to simply substitute PL 874 for JOM, as the BIA would have been happy to do.

The result of all this controversy was the vague 1953 Governor's choice amendment on which the House intent was not very clear, but the expressed Senatorial intent was that JOM special education-related services be provided.

Other Changes

Because Indians became eligible for Section 3 payments, it is necessary to note briefly the other relevant changes made in the law. It became permissible for a child to count for payment if his parent(s) worked across a State line on Federal property. The eligibility requirement was changed so that 3(a) children would never have to be counted and paid at a 3(b) rate in order to have the district qualify--they would always receive the higher 3(a) rate. A change in the method of computing payment was made; a minimum local contribution rate of one-half the average State contribution rate was added. A local agency with fifty percent impact or more became eligible for special increases where formula payments were inadequate and number of conditions were met.

Administrative Reaction to 1953 Amendment

Seeking to clarify the ambiguity created by the 1953 amendment, the Office of Education asked the BIA to explain its use of JOM. BIA regulations failed to clarify the JOM-874 relationship.. There is evidence in the official BIA regulations that the BIA wanted JOM to serve only to supplement other sources of revenue, presumably PL 874 included. The regulations first published in January of 1956 said of JOM:

> ...This Federal assistance program shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable tax effort and receipt of all other aids to the district without reflection on the status of Indian children.[20]

Public Law 84-949--Some Important Section 3 Amendments

Public Law 84-949 of August 3, 1956, only affected Indians in that it amended Section 3, the section under which they and all children were counted for payment. The act was amended so that the unpopular three percent absorption requirement was removed and the original eligibility provisions were restored--ten children and three percent in each subsection. The original provisions for determination of payments on the basis of the average daily attendance in the current year, rather than the year preceding, was restored. An alternative expected minimum local contribution rate was established--based on the average per pupil local contribution rate in the continental United States. This could not exceed the State average per pupil contribution rate. The first minimum local contribution rate of 50 percent of the State average per pupil expenditure had been found inadequate in States which had adopted a plan to equalize educational opportunities through state revenues. This amendment was an attempt to lessen the disparity between the disproportionately low amounts paid to high-State-aid states with equalization programs and higher amounts paid to low-State-aid states.

Public Law 85-620--Second Attempt to Bring Indians Under PL 874

Confusion was the result of the 1953 amendment with respect to Indians. Different State laws included different services within their definition of basic educational service, and overlapping of funds occurred. Some Indians undoubtedly were counted twice for the allocation of Federal funds for basic education, once under JOM and once under PL 874.

In its first fiscal year the amendment enticed only one Governor to choose PL 874 over JOM, the Governor of Florida.[22] In the second fiscal year, twenty Governors elected to apply for PL 874 funds for their States' Indian children. During that same fiscal year, 1955-56, ten of those states received more than one million dollars in Johnson-O'Malley funds.[23]

One obvious reason for such overlapping, far less excusable than the differences in State law definitions of basic education, was a serious lack of coordination between the Office of Education and the Bureau of Indian Affairs in Washington. In the hearings which led to the PL 85-620 revision, the BIA chief of the Branch of Education stated that once a Governor declared to the Secretary of the Interior his intention to apply for PL 874 aid for Indians, the Bureau of Indian Affairs immediately cut JOM funding to that state. If a state never made the requisite declaration, the BIA assumed it was still under JOM. This BIA official claimed ignorance of which states received PL 874 money because it did not administer PL 874. Through this simple method of failing to declare its intention, the State of Oklahoma was able to receive both JOM and PL 874 funding.[24]

Final Provisions of PL 85-620

In an effort to bring an end to the confusion, PL 85-620 repealed the 1953 Governors' choice amendment while making its second attempt to include Indians under PL 874. This time Section 2(b)(1) was amended so that JOM payments specifically would not be subtracted from PL 874 payments under either Section 2, the land acquisition section, or Section 3, as were other payments in lieu of taxes and with respect to Federal property. Thus Indian children could be counted to receive 3(a) and 3(b) funds. Section 8 of PL 874 provided that no appropriation to any department or agency of the Government other than to an appropriation to carry out PL 874 itself could be used for the same purposes as the act, but PL 85-620 made JOM payments an exception to this rule. Section 9(2), the definition of "child" which originally had excluded members of recognized Indian tribes eligible for JOM payments, was amended so that "child" meant simply any child within the age limits for which the applicable State provided a free public education. In this manner, Indians were finally and unmistakably included within PL 874. Because the amendments also made the programs of financial assistance to 3(a) children permanent, and most Indian children were 3(a) children, the Federal Government had in effect recognized a continuing responsibility with respect to Indian education.

Revision of BIA Regulations Regarding JOM--1958

Indeed, the BIA responded appropriately with amended JOM regulations to avoid duplication of payments for basic education expenses. One month after the enactment of the above amendments, the BIA revised its relevant regulation using language from the Congressional reports.

> When school districts educating Indian children are eligible for Federal aid under Public Law 874, 81st Congress (64 Stat. 1100), as amended, supplemental aid under the Act of April 16, 1934, Johnson-O'Malley Act, supra, will be limited to meeting educational problems under extraordinary or exceptional circumstances.[25]

Thus, BIA had officially accepted the use of JOM for special services for Indians at the same time that such Indians were being counted for aid under PL 874.

Public Law 93-380--Top Priority Funding for Indians

PL 93-380, the Education Amendments of 1974, greatly revised the entitlement and payment structure of PL 874 and is of major importance and benefit to Indians. All Indian children living on Indian lands were made Category A children. Until this amendment, children whose parents worked off Federal property were "B" children. The House Committee report explained that most of the estimated 9,000 children to be affected by this change were Indian children living with their parents on Federal reservations.[26] The reason for this change was that the law had in effect penalized school districts if the parents of these children went off Federal land to obtain employment.

In Senate debate, Senator Mondale explained this amendment:

> Currently, children of Indians on Federal property are counted as "B" students and reimbursed at a lower rate if parents are unemployed. Because these students place at least a high if not higher financial burden on school districts than children of Indian parents who live on Federal lands and are employed by the Government, I believe this is a long overdue improvement. This amendment would help an estimated 10-15,000 Indian students across the country by providing an estimated $2 million additional Federal aid to schools they attend.[27]

In addition to declaring all Indian children on reservations to be "A" children for funding purposes, the method of computing the money actually received by a district was amended to increase the amount of money available for districts educating Indians. "Entitlement" means the maximum dollar amount which a school district may receive, and "payment" means the actual dollar amount which a school district receives. When appropriations are insufficient to provide full funding, computed entitlements will be greater than actual payments. For the last few years, appropriations have been insufficient to fully fund all "A" and "B" entitlements. However, out of recognition of the greater Federal responsibility existing for "A" children, and the severe impact of such reductions on heavily impacted areas, appropriation acts have provided for graduated payment levels dependent on the quality of Federal connection and quantity of Federal impact.

Of the four sections of PL 874 which authorize assistance to local educational agencies, three were extended through Fiscal Year 1978 with only minor amendments.[28]

Section 3, under which districts educating Indians are funded, was provided with a new entitlement formula for use beginning in Fiscal Year 1976. Also effective in Fiscal Year 1976 is the revision of Section 5, the payments section of PL 874, which is particularly important when Congressional appropriations do not fully fund the entitlements.

Revision of Entitlement Provisions of Section 3

Section 3 (a) entitlements concern children living with parents who reside and work on Federal property, children with a parent in active duty in the military services, and children residing on Indian lands. Section 3 (b) entitlements relate to children who live on Federal property, or live with a parent employed on Federal property, or have a parent in the uniformed services on active duty. Through Fiscal Year 1975, "A" children entitlements are 100 percent times the local contribution rate times the number of "A" children. "B" children entitlements are determined by the same method but using 50 percent instead of 100 percent. The local contribution rate is the calculated current expenditure per pupil from local revenue sources in "generally comparable" school districts in the applicant district's state. No minimum local contribution rate may be less than one-half the state or national average per pupil expenditures in the second preceding fiscal year. The second preceding fiscal year is used because current statistics are seldom available. Beginning in Fiscal Year 1976, entitlements are to be based on subcategories of 3(a) and 3(b) children matched with various percentages of the local contribution rate.

Under Subsection 3(a) the three categories are military, Indian land and civilian, which, beginning with Fiscal Year 1976, will be entitled to 100 percent, 100 percent and 90 percent respectively of the local contribution rate. In addition, heavily impacted school districts, those having 25 percent or more of their ADA composed of Category A children, are entitled to 100 percent of the local contribution rate.

Prior to this time, all of these above subcategories were classified as one category and were entitled to 100 percent of the local contribution rate.

Revision of the Section 5 Payment Provisions

The Section 5 payment revisions, also effective in Fiscal Year 1976, provide a three-step payment procedure applicable when appropriations are insufficient for Sections 2, 3 and 4.

Until all payments are made under step one, no money may go to step two or three payments. The first payment step provides that all Section 3 subcategories, including the special heavily impacted districts, shall receive 25 percent of their entitlement. In the second payment step heavily impacted districts are paid the remaining 75 percent of their entitlements for their "A" children, for an essentially guaranteed entitlement of 100 percent. As most districts with heavy impact serve Indians or military personnel, this is of special benefit to Indians.[29] The regular "A" subcategories (military, Indian land, and civilian) are paid an additional 65%, 65%, and 63% respectively. The "B" subcategories (military, civilian with parent working in the county, and civilian with parent working in another county and civilian with parent employed out of state) are paid 35 percent, 32 percent, and 28 percent of the remainder of their entitlements. Children with parents working on Federal property out of state are of course paid nothing, being entitled to nothing under the revised law.

Public Law 93-380 brought public housing children under Section 3 to ensure their entitlement and payment, which had not been the case in the past. Children in public housing receive 25 percent of their entitlement in the first step, and in the second step, both "A" and "B" public housing children receive no additional payment. Section 3 payments for public housing children are required to be used for programs to meet the special educational needs of low income family children. Section 2 entitlements are paid at the 25 percent rate in step one, and 35 percent in step two. Section four entitlements are not funded at all in step one or two.

Indian children, treated advantageously like military children under Section 3(a), were provided with an additional benefit along with military children. An amendment entitled any handicapped military child or child living on Indian land to 150 percent of the usual 3(a) or 3(b) rate, if the applicant school district provided a program to meet the special educational needs of handicapped children.

Other Revisions of the Section 5 Payment Provisions

Another amendment in the law, effective Fiscal Year 1978, responded to the constant and mounting pressure to eliminate payments to 3(b) children by reducing 3(b) children or less than 25% dependency on Section 3 for revenue. An amendment which will undoubtedly affect some Indian districts, is the new state aid equalization provision. Before the amendment, states were prohibited from considering Impact Aid payments when determining eligibility for State aid or the amount of such aid to local educational agencies. This was intended to prevent states from unfairly replacing State aid with Impact Aid.[30] Resulting inequities however necessitated an exception for states with programs designed to equalize expenditures for free public education among the State's educational agencies. In the Senate debate, one senator expressed his concern over the full use of PL 874 funds in equalization programs, because he was uncertain that state equalization programs handle Indians' needs adequately. Knowing that equalization formulae take into account JOM funds, Title IV, and Title I money, he believed they should also take into account the unique problems of American Indians.[31] He said he recognized that Impact Aid was not intended to be a bonus (which it sometimes seemed to be when State aid was calculated without reference to Impact Aid and Impact Aid was calculated without reference to State aid), but some districts have added problems which may be worthy of added aid.

The amendments also include "hold harmless" provisions to reduce the immediate impact of changes in the law.

The hearings, preceding the adoption of PL 93-380, contain few references to Indians, but the statement of a Representative from South Dakota demonstrates how important full or nearly full funding of Impact Aid can be, particularly to Indians. He said:

> ...Many of the small town school principals now educating Indian students in their schools say they will not bus Indian pupils in from the reservations if they don't get their 3(b) non-military money, and high levels of 3(a) funding. In the state we have 3,904 3(a) pupils, and 264 3(b) pupils. All of the small towns where these schools are located are in the same boat--they haven't the resources to raise the revenue to educate those children without strong levels of Federal assistance.[32]

Thus, the elaborate three step payments procedure essentially guaranteeing substantial funding could prove to be of unique importance to reservation Indians.

Conclusion

Over the years, the original intent of PL 874--to provide payments in lieu of taxes because of Federal ownership of property and the impact of Federally connected students--has not changed. The long fought, complex battle to get Indians covered by PL 874 while keeping them covered by JOM has been won. With the amendments of 1974, Indians, together with military children, became the top priority recipients of PL 874 funds. The concern over duplication of JOM payments, began when PL 874 was funding only basic education--as it still is--and when JOM was funding basic education and special education and education-related services, has for the most part been eliminated. This is because JOM has evolved into a law funding almost entirely special educational services, often with a community rather than school base, and sometimes under control of Indians themselves. Only five states are presently receiving JOM funds for basic support, and the amount of such funds lessens each year. Amendments to PL 874 and JOM are not solely responsible for this gradual diverging of purposes over the years. Importantly, the regulations for JOM have ratified the process since 1956. The 1975 JOM regulations do not mention PL 874 in the same way as did the 1958 amended regulations, but these new regulations authorize JOM contracts for operational expenditures, basic education, only under the strictest conditions, including what could be called 70 percent Indian impact. JOM and Impact Aid now serve essentially different purposes, though this is not evident from the laws themselves.

Public Law 81-815: School Construction in Federally Affected Areas

Introduction

Public Law 81-815[33] provides Federal financial assistance for school construction in areas affected by Federal activities. Enacted September 23, 1950, one week prior to Public Law 81-874[34] a complementary law which provided Federal assistance for maintenance and operating expenses of school districts affected by Federal activities. The two acts together are known as Impact Aid, although PL 874 presently is of far greater importance as it is second only to Title I of the Elementary and Secondary Education Act of 1965[35] in the amount of aid furnished to elementary and secondary education, while PL 815 recently has been funded at a nearly token level. Although it is presently agreed that technically Indian children could have been counted under the original PL 815 in determining the amount of aid for which a school district was eligible, in practice few Indians were counted for aid under the act. This is because the law was drafted to respond to the serious impact on communities created by military and defense industry activities beginning with the mobilization for World War II.

The Present Operation of PL 815 With Respect to Indians

A long-standing complaint has been that PL 815 is virtually obsolete, because it is not well-funded and construction projects are very expensive. Comments concerning PL 815 in the recent hearings on the Elementary and Secondary Education Amendments of PL 93-380 serve as representative testimony for this viewpoint, both by their scarcity and their pointedness. For example, a Representative from California stated, "We have totally given up in the PL 815, but I see you still continue to write something of that in the bill."[36] A letter from an Arizona school superintendent demonstrated how Indian children could be hurt by the lack of funding. He noted that his district was using 18 substandard classrooms and needed seven more, yet he wrote:

> We have a building project approved under PL 815, however, this money must come out of our educational budget and thus the education of the Papago Indian child is suffering because of the need for additional classroom space. This year it is costing us in excess of $60,000... next year, it could go as high as $100,000..[37]

A second California witness testified, "The failure to fund 815 for the last 4 years has meant in San Diego,... that 2,000 children are being bused several miles to school."[38] These three comments were essentially the only references to PL 815 in the hearings. The corresponding Senate hearings said even less. As a rule, Congressional debate on the Elementary and Secondary Education amendments since 1966 have made very few references to PL 815, indicating its lack of importance in the overall scope of educational law.

An Alternative to PL 815 -- Section 204, Deliberate Legislative Duplication

In response to the lack of funding under PL 815 and the jurisdictional struggle in Congress over Indian education, Section 204 of PL 93-638, the Indian Self-Determination and Education Assistance Act of 1975, established a Department of Interior school construction program parallel to PL 815 administered by HEW.[39] For the most part, it is an alternative way to fund PL 815 for Indians. It is specially the work of Senator Paul Fannin from Arizona.

After a thwarted attempt to get PL 815 funding for his state through the appropriate Congressional committees, he was successful in writing Section 204 into the Indian Self-Determination and Education Assistance Act. It authorized $35 million annually through the fiscal year ending June 30, 1978. At least 75 percent of this amount would be for public school projects meeting the eligibility requirements of PL 815, Sections 14 (a) and (b), according to the priority list and the needs assessments of HEW. The Department of the Interior would do only a minimum follow-through. Section 204 differs from PL 815 however, in that it authorizes funds, equalling no more than 25 percent of those appropriated, to be spent also for the construction, acquisition or renovation of facilities for previously private schools under Indian control, under Section 208 of the Indian Self-Determination and Education Assistance Act. The language of Section 208 is unclear as to whether previously private schools refers only to previous mission schools, or previous BIA schools as well. Senator Fannin's office predicts that the Senate will fund Section 204 but the House will not, preferring to have the administration ask for the funding, and that the outcome will then be decided in conference.[40]

In summary, there are two laws authorizing funding for construction of public schools needed because of enrollment of children living on Indian lands, one with a recent history of being seriously inadequately funded, the other yet to be funded for the first time. PL 815 is under HEW and Section 204 of PL 93-638 is under the Department of Interior. Section 204 was a deliberate attempt to provide a second avenue of funding for meeting Indian school construction needs.

Notes to Impact Aid: PL 874 and PL 815

1. 64 Stat. 1100, 20 U.S.C. 236-451-1, 242-245, Sept. 30, 1950.
2. H. Rep. No. 2287, _supra_ note 2, at 1.
3. _Library of Congress Legislative Reference Service_, 81st Cong., 1st Sess., _Report to the Senate Comm. on Appropriations on Education of Children Living on Federal Reservations and in Localities Particularly Affected by Federal Activities_ (Comm. Print 1949).
4. H. R. Rep. No 3109, 81st Cong., 2d Sess. 1-2 (1950).
5. H. R. Rep. No. 2287, _supra_ note 2, at 29.
6. _Id_. at 11.
7. _Id_. at 12.
8. _Id_. at 13.
9. PL No. 81-874, §9(1), 64 Stat. 1108.
10. S. Rep. No. 714, 83rd Cong., 1st Sess. 6 (1953).
11. _Id_. (emphasis added).
12. H. R. Rep. No. 703, 83rd Cong., 1st Sess. 9 (1953).
13. _Id_. at 9-10.
14. _Id_. at 342.
15. _Id_. at 352.
16. _Id_.
17. _Id_., see especially 352, 353, 354, 357, 359, 361, 365, 367, 370.
18. _Id_. at 40.
19. _Id_. at 76.
20. 25 C.F.R. 44.4(b) (1956); republished Dec. 4, 1956; redesignated 25 C.F.R. 33.4(b) (1957; amended Aug. 21, 1974.
21. H. R. Rep. No. 2357, 84th Cong., 2d Sess. 11 (1956).
22. Office of Education, _Fifth Annual Report on the Administration of Public Laws 81-874 and 81-815_, at 12 (1955).

23. Office of Education Interoffice Memorandum from B. Alden Lillywhite to James Kelley, October 11, 1956, in Clifford study IV. at 65.

24. *Hearings on Bills Relating to Proposed Amendments to PL 815 and PL 874 Before a Sub-comm. of the House Comm. on Education and Labor*, 85th Cong., 1st and 2d Sess. 732 (1957-58).

25. 25 C.F.R. 33.4, *as amended* at 23 Fed. Reg. 7106 (1958) (emphasis added).

26. H. R. Rep. No. 805, 93rd Cong., 2d Sess. 41 (1974).

27. 120 Cong. Rec. S8163 (daily ed. May 15, 1974).

28. The three sections are Section 2, Federal acquisition of real property; Section 4, sudden and substantial increases in attendance caused by Federal activity; and Section 6, disaster assistance. Section 6, a permanent section, authorizes Federal assistance to agencies providing education for those whom local educational agencies cannot or will not, under state law, provide, i.e. military children on bases.

29. 120 Cong. Rec. S 8262 (daily ed. May 15, 1974).

30. 120 Cong. Rec. H1661 (daily ed. March 12, 1974).

31. 120 Cong. Rec. S8610 (daily ed. May 15, 1974).

32. *Hearings on H. R. 16, H. R. 69, H. R. 5163, and H. R. 5823, Bills to Extend and Amend the Elementary and Secondary Education Act of 1965, and for other purposes Before the General Subcomm. on Education of the House Comm. on Education and Labor*, 93d Cong., 1st Sess. 1399 (1973).

33. Act of September 23, 1950, 20 U.S.C. 631-647, 72 Stat. 548 (1958) *formerly* 64 Stat. 967 (1950).

34. Act of September 30, 1950, 20 U.S.C. 236-451-1, 242-245, 64 Stat. 1100.

35. Act of April 11, 1965, 79 Stat. 27.

36. Hearings on Bills to extend and amend the Elementary and Secondary Education Act of 1965 before the General Subcomm. on Education of the House Comm. on Education and Labor, 93d Cong., 1st Sess. Vol. 2 (1973) (testimony of Robert Leggett).

37. Id. at 679.

38. Id. at 607.

39. Act of Jan. 4, 1975, PL No. 93-638, S. 204,88 Stat 2214.

40. Interview with Rick Lavis, Legislative Assistant to Senator Paul Fannin of Arizona, in Washington, D.C., Aug. 5, 1975.

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (ESEA): PL 89-10, 79 Stat. 27

Introduction and General Policy

Stated in the most general terms, the broad purpose underlying the Elementary and Secondary Education Act of 1965 has been to offer special or remedial education benefits to the educationally deprived poor of the United States. Initiated as a part of the Johnson era's ambitious "Great Society" social program, the act was hailed as the device which would cut short the legacy of illiteracy and consequent poverty which each deprived generation passed on to its children. In the jargon of its sponsor, ESEA was expected to 'break the chain' or 'end the vicious cycle' of poverty-spawned ignorance.

ESEA, as it exists today, has expanded far beyond the scope of the original 1965 program. An example in point is the extension, in 1966, of ESEA to include Indian children (in reservation schools or in BIA boarding schools) among the categories of children with special educational needs who were eligible for aid under ESEA. Other amendments, such as the addition of a bilingual education title, and a program of planning, pilot, and demonstration projects for Indians have also accrued to the particular benefits of educationally disadvantaged Indian children.

Our present examination will focus on two of the original bill's titles (Titles I and II) which were amended to provide for Indian participation, and one of the added titles, Title VII which addresses the special situation of the bilingual or non-English speaking student.

The Original Act, PL 89-10, 79 Stat. 27, Titles I and II

As originally enacted, April 11, 1965, ESEA made no specific provision for Indian children in any of its five titles. Title I, which in 1966 was to become an important force in Indian education, originated in 1965. It provided federal financial assistance to local education agencies (LEA's) with large concentrations of low income families upon the well-documented assumption that children from low income families faced special disadvantages as a result of living in an impoverished environment. The amount of Federal assistance for which a district was eligible was determined by the formula:[1]

1/2 x A x B = Amount of Entitlement

where A = the average per pupil expenditure in the State and B = the number of school children aged 5-17 years in the district whose families, at the time of the 1960 census had an income less than the "low income factor" which was originally $2,000 per year. Because a national census is taken only once a decade, the number of families whose income fell below the "low income" level was augmented by an updating factor, i.e., the number of children from families with an income greater than the "low income" factor as a result of government programs for "Aid to Families With Dependent Children" (AFDC). In order to avoid counting AFDC children who were already counted in the census as being from families with income under the "low income" level, only children from AFDC families with total incomes greater than $2,000 per year were counted to qualify for funds. In determining this "updating" addition to the formula's "B" total which was not to exceed 30 percent of the LEA's budget in the first year, a district needed (a) 100 percent qualifying children, or (b) a minimum of of three percent of its total enrollment, but not less than ten, qualifying children. Additional "Special Incentive" grants were provided for LEA's which increased their 1965 per-pupil expenditure beyond 105 percent of the 1964 per-pupil expenditure, or increased their 1966 expenditure beyond 110 percent of the (already increased) 1965 figure.

The children who were counted by the LEA for purposes of the eligibility formula were not necessarily the only children who would ultimately participate in the basic Title I program. Indeed, the Federal funds which the formula produced were paid finally to the qualifying district. The only real control over the districts' use of the funds was the State's authority to hold the district to a plan which furthers the purposes of the Act. Funds obtained under Title I basic grants in fact were paid over to the State government which then transmitted the funds to those LEA's within the State which were conducting a proper Title I program. The propriety of an LEA's program was considered by the State at the time that the LEA made application for a project grant. Requirements for such a grant under the original act included evidence of:

1) programs designed to meet the special education needs of educationally deprived children in areas having high concentrations of children from low income families,

2) programs of sufficient size, scope and quality to give reasonable promise of meeting children's needs,

3) opportunities for the participation of educationally deprived children in non-public schools within the target area,

4) effective procedures for evaluating, at least annually, the effectiveness of the programs in meeting the special educational needs of deprived children.

The State education agency was empowered to disapprove the application of any LEA which did not meet the above criteria, but was to afford the LEA reasonable notice and opportunity for a hearing.[2] States were allowed to use up to one percent of their total entitlement for administration of this title.

The Senate committee report which accompanied the original act stated that:

> It is the intention of the proposed legislation not to prescribe the specific types of programs or projects that will be required in school districts. Rather, such matters are left to the discretion of the local education agency since education needs and requirements will vary from State to State and district to district.... There may be circumstances where a whole school system is basically a low income area and the best approach to meeting the needs of educationally deprived children would be to upgrade the regular program.... There may be situations, on the other hand, where this approach would be quite unsatisfactory.[3]

Title I Aid to Private Schools

The Senate report on PL 89-10 stated that the bill specifically contemplated a broadening of public school programs such as would include private school students who were educationally deprived.[4] Naturally, the term "private school" encompasses religious or parochial schools (or mission schools serving Indians) and Congress thus found itself on the edge of a profound First Amendment problem. Debate on this question was prolonged and bitter, especially in the House where several Congressmen attacked the proposed Section 205(A)(2) as violative of the Federal Constitution. This section required LEA's Title I applications to make provision for the special education needs of educationally deprived private school students. It was pointed out, moreover, that the Constitutions of twenty-eight States explicitly forbid State aid to private schools. PL 89-10 responded to this criticism by restricting the scope of permissible aid to private schools to "special" or "remedial" services. The meaning of these terms was greatly clarified by the House committee report which accompanied the 1966 amendments to ESEA. This report stated that only "remedial" services were to be provided on private school premises by public school teachers. The report proceeded to define remedial services as remedial reading or arithmetic, but not including programs which broaden or supplant the private school's curriculum. The Committee declared, however, that no such remedial restriction was placed on the services which were offered to private school students on public school property. The "remedial" service restriction was meant to apply to mobile equipment used at the private school and in the Committee's view no public agency was permitted to pay the salary of non-public school personnel or assign public personnel to a private school on a full-time basis.[5]

Title II--Library Resource

Title II, as originally enacted, provided that any State which applied for a grant under this provision was entitled to a grant which bears the same ratio to the total sum available as the number of enrolled public and private elementary and secondary school children in the State bears to the number of enrolled children in all States. Grants were available to purchase all types of library resources including audio-visual equipment and State applications were to guarantee that teachers and students from private schools would have equitable access to such materials. The act specified, however, that actual title to such library resources was, in every case, to remain vested in a public agency. No provision was made in this original act for library resources for BIA schools.

Elementary and Secondary Education Amendments of 1966, PL 89-750, 80 Stat. 1191

PL 89-750 was the first major amendment to the statutory scheme conceived by the 1965 act. While the original act was not drastically altered by this 1966 legislation, the amendment was quite significant for American Indians since PL 89-750 acted to amend Section 203(A)(1) of PL 874 by authorizing a "set aside" for educationally deprived children on Indian reservations and in BIA boarding schools.

With regard to the set aside for Indian children, the House Committee on Education and Labor expressed a legislative intent,

> that these funds be used to meet the special educational needs of Indian children and not merely become co-mingled with other Federal funds, the impact of which becomes lost in the total program. Therefore, the Committee expects the Office of Education to review carefully the special programs which the BIA intends to implement with these funds.

The Committee expressed a particular desire to see this amendment interpreted broadly enough to provide for the needs of all educationally deprived Indian children whether they were enrolled in school or not. This amendment for BIA schools was also the subject of testimony during hearings which were held on the proposed HR 13161 in March of 1966. A statement submitted by the Association on American Indian Affairs and Arthur Harris, Associate Commissioner of Education, U.S. Office of Education, supported the "Indian participation" sections which the bill added to Titles I and II.[6] Mr. Harris in particular stated that,

> As a final comment on Title I, I would like to point out that two additional groups of children--Indian children and migratory children--are being proposed for special consideration in much the same way certain

> handicapped children were handled through amendments to the title in the past year.
>
> Special provision would be made to meet the special educational needs of educationally deprived Indian children in Bureau of Indian Affairs schools. In fiscal year 1965, there were nearly 150,000 Indian children between the ages of 6 to 18. Only 134,000 of them were enrolled in school, more than 8,000 were unable to attend because of lack of facilities. Four thousand lived in dormitories away from home so that they might receive an education. Of those who attend school, 50 percent drop out before they complete the 12th grade. On the reservations, adults under 45 years of age average an eighth-grade education, compared to a national average of almost 12 years of school.

Title II Library Resources Programs were also amended by this 1966 act to allow for participation by Indian students in BIA schools.

Other developments in these 1966 ESEA amendments included a revision of the Title I basic formula wherein the low income factor was raised from $2,000 per year to $3,000 per year so as to include more children in the sweep of ESEA. The federal per child contribution, moreover, was modified so as to equal one-half the average per child expenditure in the State or one-half of the national average per child expenditure, whichever was higher. "Incentive" grants under Section 204 of the original ESEA were abolished as being too erratic and inequitable in their effect.

Elementary and Secondary Education Amendments of 1967, PL 90-247, 81 Stat. 783

The 1967 amendments to ESEA extended without modification the authorization for the above mentioned Indian programs under Title I and II of the 1966 act. In evaluating the progress of these programs, Section 90-188 of the House committee report noted that virtually all of the 48,000 children in attendance at BIA schools came from low income families. The two year extension provided by this 1967 act made the authorization of the Indian programs under Titles I and II coincide in duration with the authorization of the basic programs under those titles. In a somewhat related development, the Title I program of "special effort" grants was restored in 1967 and recast in terms of a State "effort index" with a formula designed to cure the inequities of the "State expenditure percentage" of the original Title I.

Another important development in the 1967 amendments to ESEA was the advent of the Title VII Bilingual Education Act. Under this program LEA's could apply at the Office of Education for grants to develop and conduct programs targeted at the needs of children of limited English-speaking ability between the ages of 3 and 18 years. While the legislative history of this 1967 provision contains almost no references to Indians (e.g., not a single Indian witness in 2 volumes of Senate testimony on Title VII taken in May of 1967), Title VII was, in time, to become a significant force in Indian education.

Elementary and Secondary Education Amendments of 1969, PL 91230, 84 Stat. 121

The 1969 amendments to ESEA were rather extensive and were prompted in part by abuses in the Title I program which were uncovered in a 1969 study by the NAACP Legal Defense and Education Fund. This report suggested that a considerable portion of Title I funds were not being used to service the special education needs of educationally deprived children but were being channeled into "general support" in lieu of local or State money, or were being used to supplant State and local expenditures for special education. Thus, the House report on the 1969 bill warned that the States had a continuing duty to inform LEA's if their applications did not conform to the law and to disapprove those which were inconsistent with the purpose and intent of Title I.[7] The Committee listed a number of administrative abuses which had been uncovered by an investigation by the U.S. Office of Education. The Committee also complained that States had generally failed to produce the objective, statistical measurements of program success which Title I calls for, while chiding the U.S. Office of Education for its failure to demand such figures from the States. Section 109 of the 1968 amendments was the Congressional response to the above described problems. This Section was a simple, specific prohibition against the use of Title I funds to supplant State or local resources. Under the prohibition of this Section, LEA's must use Title I funds only to supplement funds from State and local sources and must use these latter types of moneys to fund Title I districts in amounts comparable to the amounts available to non-Title I districts. The U.S. Office of Education regulations measure comparability by:

1) teacher/pupil ratio,
2) expenditure per pupil for instructional salaries,
3) expenditure per pupil for other instructional costs, and
4) available courses and services.[8]

Other developments in the 1969 amendments included an extension to June 30, 1972 of the authorization for Title I and II Indian programs. While most other ESEA programs received renewed authorization through 1974, the Indian "set aside" provisions were extended for a shorter period in response to the report of the Special Senate Subcommittee on Indian Education (the well-known report, A National Tragedy: A National Challenge) which found that the proliferation of set asides for BIA was an unsatisfactory method for availing Indian children of the advantages of Federal education programs. The House Education and Labor Committee thus recommended that BIA transfer authority should expire on June 30, 1972 with the understanding that a comprehensive Indian Education Act would be developed in the meantime. In a related development, the committee cautioned that there is no authority for BIA to use Title funds for administrative expenses and called upon BIA to "precribe higher standards with respect to transfer funds than the law permits with respect to funds granted to States."[9]

Other modifications of Title I were seen in the provisions which increased the "low income" factor to $4,000, effective June 30, 1972, and added a new program of special grants for urban and rural schools serving attendance areas with the highest concentrations of children from low income families. This latter program created two types of special grants for "high concentration" low income districts: formula eligibility (§ 131 (A)(1)) and eligibility at the discretion of the State education agency (§ 131(A)(2)). The committee explained the intent of these special grant programs as adherence to the principle of concentrating funds where the need is greatest so that a limited number of dollars can have a genuine impact rather than being dissipated in laudable but inconclusive evidence.

Title II authorization was extended without any change in program provisions by the 1969 Amendments. Title VII, however, was extended by the addition of a new section which made children in BIA schools and in non-profit, independent, reservation schools eligible for participation in Title VII programs. In the words of the committee, "this section is designed to encourage increased Indian participation in, control of, their own bilingual education programs."[10] The House report declared, moreover, that funds authorized for programs in BIA schools would not be realeased by OE until,

> there is satisfactory assurance that there has been adequate tribal and parental participation in the development of the project for which application is made and that there will be such participation in the operation of that project.... The legislation gives complete discretion with respect to standards and conditions, to the Commissioner of Education.[11]

The Education Amendments of 1974, PL 93-380

By 1974, Title I had grown to the point where it was funded at a level of $1.8 billion and served more than 6 million children in 13,900 school districts. Critics of ESEA have pointed out the absence of hard data to prove the success of ESEA in improving accomplishment levels of basic skills, but one answer to this contention exists in the argument that,

> Title I provides aid to school districts to use as they see fit to improve the education of educationally deprived children. Many school districts in exercising this local discretion have decided that it is more important to use substantial sums of money to meet the health and nutritional needs of their students than to concentrate solely on remedial reading or math. Therefore, to judge these programs according to the sole criterion of reading achievement is an invalid evaluation of their success.[12]

Whatever the relative merits of ESEA, the act is a present reality, for PL 93-380 extended its authorization for three years, updated the Title I formula, and substantially extended the reach of Title VII bilingual education provisions.

The Title I basic grant formula was modified by PL 93-380 in that the Orshansky Index of Poverty was adopted in lieu of a single, fixed "low income" cutoff figure. The Orshansky index measures poverty according to three factors: (1) the number of children in the family; (2) the sex of the head of the household; and (3) the farm or non-farm stature of the family. The superiority of this system over a rigid cutoff figure is obvious. Whereas, under the old formula, a family with one child and an income just below the cutoff figure was counted under Title I, a family with a *slightly* higher income and six children was not counted although the latter family was far more seriously poverty stricken. Under the new formula each school district's total number of children was multiplied by 40 percent of the State per pupil average expenditure. If a State's average per pupil expenditure was in excess of 120 percent of the national average expenditure, school districts in that State would be entitled to a payment of 40 percent of 120 percent of the national average. Similarly, the amendment provided that no State shall receive a grant computed on less than 80 percent of the national average expenditure even if its own average is below that figure.

Authority for payments to the Secretary of the Interior for the Bureau of Indian Affairs was extended by PL 93-380. According to BIA figures, these grants in fiscal year 1973 hired 30 additional professional staff members and 1,225 para-professional assistants, three-fourths of whom were Indians. However, PL 93-380 repealed the system of special grants to schools with highest concentrations of children from low income families because of its excessive administrative cost requirements. Similarly, the Library Resource Program of Title II was retained by PL 93-380, but was consolidated, for administrative efficiency, with a number of other Federal education programs.

In the area of bilingual education, Title VII was extended by PL 93-380. Committee figures indicated that in 1974, only 8 percent of the programs approved under this title served Indians. This small piece of the pie drew criticism from Indian witnesses at the hearings on Title VII held by the House Committee on Education and Labor. Birgil Kills-Straight of the Coalition of Indian Controlled School Boards protested the fact that, while $23.1 million was spent on bilingual programs for the Spanish-speaking in 1973, only $2.6 million was spent on bilingual programs for Indians. Another Indian witness, Vivian One Feather of the Red Cloud Indian School, Pine Ridge, South Dakota pointed out that Indian bilingual programs were especially expensive because it was necessary to develop a written language and to find Indian speaking teachers. These considerations were raised by Birgil Kills-Straight as requiring a long-term Federal committment to the funding of bilingual programs for Indians.

The 1974 amendments to Title VII allowed the Commissioner to fund programs in schools other than those with large concentrations of poor children, if the bilingual needs of "depressed" districts had already been met. Finally, it should be noted that the authority for Section 810 of PL 92-318, Title IV (the Indian Education Act) was renewed for three more years by PL 93-380.

Title I and JOM

In short, Title I of ESEA appears to be so broad in scope that it justifies almost any type of special program. This broad authorization, when applied to Indians, parallels the authorization seen in the Johnson O'Malley Act. Myron Jones, in his paper Indian Education in Public Schools,[13] states that districts which are over 75 percent Indian and receive substantial ($400 per pupil) non-categorical JOM funding will use JOM funds for "whatever the school administration considers to be 'meat and potato' needs...while Title I will be used exclusively for supplementary classroom needs, usually more of what hasn't worked in the basic school program." Where State plans (New Mexico, Montana, and Washington) require that the JOM funds be used only for supplemental and categorical aid, Myron Jones writes that the districts "will use JOM and Title I in similar types of programs primarily remedial (where) staff people can be moved back and forth from one to another without knowing the difference." Where Indians comprise less than 60 percent of the school district and there is a competing Title I group, Indians will be thrust into a program designed for the other Title I group unless the State requires JOM to be used for supplementary programs in which case "JOM becomes Title I and the regular Title I program becomes overwhelmingly non-Indian."

According to Myron Jones' paper, Indian students are particularly shortchanged in districts with "fewer than 200 Indian students (comprising less than 20 percent of the school population) where Indians will receive very small amounts of JOM funding....Title I funds in these districts might be three times as big as JOM, but they tend to be ignored because (1) they are newer, (2) Title I regulations are far more complicated, and, (3) they are not exclusively Indian." Thus, in summary, there is a JOM/Title I overlap which (1) is potentially enormous, (2) acts, in many instances, to shortchange Indians, and (3) varies greatly depending upon the ethnic character of the district served, the nature of the State JOM plan, and the extent to which the district applies for funds under either act.

Notes to Elementary and Secondary Education Act of 1965 (ESEA): PL 89-10, 79 Stat. 27

1. Act of April 11, 1965, Pub. L. 89-10, Title I, §203.
2. *Id.* §205(b).
3. U.S.C.C.A.N. 1454, 89th Cong., 1st Sess. (1965).
4. *Id.*
5. U.S.C.C.A.N., *supra* note 3, at 1456.
6. *Hearings on Elementary and Secondary Education Amendments of 1966 Before the Senate Comm. on Labor and Public Welfare*, 89th Cong., 2nd Sess., pt. 1, 110 (1965).
7. U.S.C.C.A.N., 91st Cong., 2nd Sess., 2774 (1969).
8. *Id.* at 2789.
9. *Id.* at 2724.
10. *Id.* at 2802.
11. *Id.* at 2803.
12. U.S.C.C.A.N., 91st Cong., 2nd Sess., 4097 (1969).
13. Available from Indian Education Training, Inc., 5510 Domingo Road, N.E., Albuquerque, New Mexico 87108 (1974).

TITLE IV (THE INDIAN EDUCATION ACT OF 1972) of PL 92-318

Introduction

Title IV of PL 92-318, popularly known as "The Indian Education Act," had its genesis with the 1969 Senate Investigative Committee report, Indian Education: A National Tragedy--A National Challenge.[1] This report of the Special Subcommittee on Indian Education described with considerable detail the catastrophic failure of Federal Indian education programs and made a number of specific recommendations for the correction of this long standing deficiency. Among the facts cited by the committee in support of its legislative recommendations were its findings that:

> (1) The dropout rates for Indian children are more than twice the national average, and approach 100% in some areas.
>
> (2) Indian children taking standardized achievement tests consistently score 2 to 3 years behind white children. Indian children, moreover, fall progressively further behind the longer they stay in school.
>
> (3) One fourth of elementary and secondary teachers, by their own admission, would prefer not to teach Indian children.
>
> (4) More than any other minority group, Indian children believe themselves to be "below average" in intelligence, even though evidence is contrary to this belief.[2]

The subcommittee recommended:

> (1) the elimination of "set aside" funding of BIA schools in Federal programs such as ESEA and the creation of direct funding for these programs;
>
> (2) the substantial revision of the Johnson O'Malley Act, a move which the subcommittee felt was mandated by the failure of BIA to adequately effectuate an administrative reform of JOM;
>
> (3) the consolidation, under one statute, of programs relating to adult education, model programs, research, library resources, programs for

the handicapped, and bilingual, bicultural education;

(4) the creation of advisory groups composed of Indians expert in the disciplines or areas covered by each title as well as the creation of community councils to advance the ideal of Indian self-determination.[3]

Less than one year after the issuance of the Special Subcommittee's report, the "General Indian Education Act" (S. 4388) was introduced by Senator Edward Kennedy and Senator Mondale, both of whom were prominent figures in the development of the "National Tragedy" report. On June 27, 1972 the Indian Education Act was signed into law.

Title IV--JOM Focus

Despite the recommendation of the Kennedy report that the Indian Education Act should extensively overhaul JOM,[4] PL 92-318 attempts no real revision of the former statute. This seems particularly surprising in light of the fact that JOM, at the time of its inception, was frankly intended to facilitate assimilation[5] and eventual assumption by the states of responsibility for Indian education. Background materials on PL 92-318, moreover, (especially the Kennedy Report) reveal a marked congressional displeasure toward BIA for its failure to attempt a suitable administrative revision of JOM and express an intent to revise the statute by legislative means.[6]

The report of the Senate Interior Committee on the Indian Education Act[7] explicitly acknowledges the heritage of JOM and cites ESEA and PL 874 as extending the JOM policy of educating Indian children in State school systems. The report, however, disavows any intent to attempt termination through the Indian Education Act.

Indeed, it states that the policies of termination and relocation have intensified the crisis in Indian education and the Act itself specifically attempts to reverse the tragic results of termination by making terminated and non-reservation Indians eligible for all the benefits of the Act.[8]

Part A: Statutory Structure

Part A of PL 92-318, Title IV, is concerned largely with the revision of PL 874 as it applies to school districts on or near Indian reservations. Title IV does not affect the existing funding provisions of PL 874 in any way. Rather, it provides authorization for additional funds for formula grants for special Indian education programs by adding a new Title III to PL 874. This new Title III allows for the funding of pilot programs, planning projects, and the acquisition of teaching equipment designed to service the special educational needs of Indian children. Community and parent participation are stressed by provisions which require grant programs to be formulated in consultation with Indian parents and with a public hearing.[9] Community control and self-determination are stressed by provisions which allow for a 5% set aside for Indian controlled schools which are on or near a reservation but which are not affiliated with a State school system.[10] (This set aside is increased to 10% by PL 93-380).[11] The intent of this section is underscored by the Interior Committee's statement that the Commissioner is to actively solicit applications under this (NON-LEA) provision.[12]

Part A: Legislative Intent

Part A of Title IV reflects Congressional concern over the wasteful character of PL 874 which has given more money to the wealthiest districts in the nation than to impoverished reservation areas.[13] Title IV, however, stops short of revising PL 874 to guarantee that Indians receive a share of existing PL 874 funds equal to the local area count of Indian children.[14] PL 874, moreover, makes no provisions for the special educational needs of Indian children (such as remedial or bilingual education) since PL 874 funds are channeled without restriction into the general funds of the impacted school district. The original draft of the Indian Education Act would have removed reservation areas from the PL 874 "impacted area" funding scheme and would have utilized the Title IV delivery system instead. Indian spokesman, however, expressed fears that the Title IV funding scheme would emerge as a low priority in the appropriations scramble and thus opposed the idea of severing Indian education from the PL 874 "pork barrel" funding process. Title IV, as a result, was amended to allow for continued Indian participation in PL 874.[15]

Part B: Statutory Structure

Part B of Title IV establishes a program under which the Commissioner of Education is authorized to make discretionary grants for the support of special projects designed to meet the remedial education needs of Indian children. This discretionary grant program is established under the auspices of the Elementary and Secondary Education Act of 1965, in that Title IV (B) adds a new section (810) to Title VIII of that act. Title IV does not, however, repeal or supplant any of the wide variety of existing ESEA programs which include bilingual education programs for strengthening State and local education agencies, financial assistance to local education agencies for low income children, etc.

Under this new section (810)(d) the Commissioner is empowered to make grants to State and local education agencies, Indian tribes, and organizations, and Federally supported elementary and secondary schools to support special pilot and demonstration projects which are designed to improve educational opportunities for Indian children. These programs may be in areas such as bilingual education, bicultural education, special health and nutrition services, etc. Section (810)(c), on the other hand, allows the Commissioner to make grants to State and local education agencies, to tribal and other Indian community organizations for the development of educational opportunities for Indian children. Grants under this latter section may be used first, to provide educational services which are in short supply and, second, to establish model programs. Section (810)(d) allows for grants to State and local educational agencies together with institutions of higher learning for the purpose of preparing persons to serve Indian children as teachers and improving the qualifications of persons who already are teachers.

As is the case in Part A, applications under Section 810 must state that the advice of Indian parents has been sought in the development of the proposed program, but tribal government approval is unnecessary. Furthermore, Indian organizations are given priority in the bidding and selection process. As of June 30, 1972, funds for library resources, supplemental education centers, and education of the handicapped (ESEA Titles II, III, and IV) which were formerly paid to Interior were discontinued. Funds for these purposes are now available under Part B. Bilingual education remains partially under ESEA VII.

Part B: General Background

The special education focus of Part B is explained by the facts that less than 1/5 of the Indian population has completed high school, and that the Indian drop-out rate approaches 100% in some school districts. Nationally, moreover, 40% of all Indian students drop out before completing high school.[16] The Senate committee reports indicate a legislative conviction that this state of affairs results largely from the absences (from public school curricula) of materials which are tailored to the special educational/cultural needs of Indians and the frequent use of course materials which are derogatory to Indians.[17] Thus, a major priority in Part B is the Section 810(d)(1) and (2) program for preparing individuals to serve Indian children as teachers, aides, etc. In this connection, the committee expresses an intent that Indian institutions of higher education will be preferred applicants under Section 810(d). This Part B concern for special education is consonant with the most recent development in JOM fund disbursement which leans heavily toward special education while leaving "general support" type funding to be assumed by PL 874, Impact Aid.

It is important to note that the Section 453 definition of "Indian" makes terminated tribes and urban Indians eligible for these "special education" focus programs. It is significant also that Parts A and B do not address the questions of parent participation in general, curriculum reform, or in teacher recruitment--for example, Title IV represents a decidedly piecemeal approach to educational reform, leaving most questions of self-determination unresolved.

Part C: Adult Education, Statutory Structure

Part C of Title IV provides for an adult Indian education program by amending Title III of the general Adult Education Act which, itself, is part of the ESEA amendments of 1966. Part C redesignates Section 314 and Section 315 as Section 315 and Section 316 respectively and adds a new Section 314. Section 314 provides that the Commissioner may make grants to State and local agencies and to Indian tribes, institutions, and organizations to support planning and pilot projects designed to improve employment opportunities and literacy levels of adult Indians and to procure high school equivalency certificates for adult Indians.

Part C: Background

In its discussion of Part C, the Senate Interior Committee cites statistics which reveal an illiteracy problem of enormous proportions among adult Indians.[18] This situation, as the Committee points out, has far reaching and disasterous effects in that illiterate parents are unlikely to imbue their children with an appreciation of the benefits of a formal education and thus the children are often condemned, themselves, to functional illiteracy. Illiteracy, moreover, is a prime factor in contributing to adult unemployment, alcoholism, etc.

Part D: Office Of Indian Education-Statutory Structure

Part D, Section 441 of Title IV establishes the Office of Indian Education at the bureau level within the Office of Education (HEW). This bureau functions to administer the programs created by Parts A, B, and C of Title IV and is headed by a Deputy Commissioner of Indian Education. Section 442 establishes a National Advisory Council on Indian Education which consists of 15 Native Americans and is charged with advising the Commissioner of Education with respect to the administration of any program in which Indian children or adults can participate and which is administered by DHEW.

Part D: Background

The committee reports on Title IV cite, as reason for inception of Part D, the failure of the Office of Education to keep adequate data on Indian education as well as the necessity of phasing out the general paternalism inherent in Federal Indian policy.[19]

Part E: Miscellaneous

Section 451 amends the Higher Education Act of 1965 as amended by EPDA, the Educational Professions Development Act of 1967. EPDA aimed at stemming the nation-wide shortage of qualified teachers through an extensive program of college training and continuing education for teachers. Section 451 of Title IV provides that 5% of the money available for their programs shall be used to fund programs to serve as teachers for reservation children.

Section 452 amends ESEA to allow nonprofit tribal institutions to participate in programs under that act in the same manner as a local education agency. The import of this section is substantially the same as that of Section 303 (B) (Part A, Title IV) which makes a 5% set aside for non-LEA's under PL 874.

Section 453 defines "Indian" for purposes of this act. The definition is deliberately broad and inclusive so as to make non-reservation Indians and members of "terminated" tribes eligible for the benefits provided by the act.

Public Law 93-380 (Revising Title IV)

PL 93-380 authorizes a continued annual appropriation of 35 million dollars for Part B of 92-318,[20] and extends the commissioner's authority under Part A of Title IV until July 1, 1978.[21] This most recent measure also amends Part B by providing that the Commissioner shall not approve any grants under Section 810 (b), (c), or (d) of ESEA,(as added by Part B Title IV) unless he has determined that the grant program makes provision for the participation of eligible children in the area who are enrolled in private, non-profit elementary and secondary schools.[22] Consonant with this amendment is the PL 93-380 revision of the Title IV "non-LEA" set-aside provision which is increased from 5% to 10% of all Part A monies.[23]

Part B of Title IV is expanded in scope by Section 422 of PL 93-380 which authorizes the Commissioner to make grants to or contract with institutions of higher education, Indian organizations, and Indian tribes for the purpose of preparing individuals for teaching or administering programs aimed at the special educational needs of Indians. The Commissioner's authority under this Section extends to the granting of fellowships which are to be awarded preferentially to Indians. Section 423 provides companion authority which authorizes the Commissioner to award up to 200 fellowships to Indian students in fields other than education.

Hearings: PL 92-318, Title IV

The Indian Education Act, in its several proposed forms, generated some five volumes of recorded testimony in a number of Congressional hearings during 1971 (see bibliography). Representatives of the Federal bureaucracy, reservation and non-reservation Indians, representatives of education lobbies, and others appeared to comment on the proposed legislation, and the following summary attempts to highlight the major issues on which this testimony focused Questions such as the advisability of direct funding of Indian tribes and "non-LEA" schools or the best definition of the theoretical "Indian" to whom Title IV services would be available, provoked many diverse responses from a widely varied spectrum of witnesses.

Removal Of Indian Education From PL 874

It was the proposal of removing Indian education from PL 874 which Senator Fannin (one of the sponsors of S 659, Title IV) referred to as the crucial question left unanswered by Title IV.[24] As noted above, the original draft of Title IV cut Indian education away from the wasteful PL 874 "delivery system", but Indian leaders expressed such great apprehension over this move that later drafts of S 659 were amended to restore the PL 874 funding source to Indians.

Termination of ESEA II, III, IV Funds For Indians

Like the proposal for the termination of PL 874 money, the provisions of Title IV which cut off various ESEA benefits to Indians and replaced them with authorizations for programs under the new bill met with substantial opposition from Indian groups in Congressional hearings. William Youpee, President of the National Tribal Chairman's Association, protested the loss of the ESEA money[25] as did Benny Attencio, Chairman of the All Indian Pueblo Council. Bolstering their objection is the testimony of James Hawkins, Director of Education Programs for the BIA, who conceded the weakness of the Bureau's schools in a number of areas, especially in their programs for the emotionally and physically handicapped (precisely the areas covered by the terminated ESEA Titles).[26] Mr. Youpee and Mr. Attencio were both of the opinion that the Title IV benefits should be added to the existing but deficient ESEA programs rather than functioning as a substitute for them.[27]

School Construction. PL 815 Deficiencies

In a series of discussions which closely paralleled the dispute over discontinuation of the old ESEA titles, Indian witnesses who urged that Title IV include an authorization for Indian school construction, were met with the objection of "duplication of function." This was raised by administration witnesses who asserted that PL 815 already provided such authorization and needed only to be properly funded in order to meet Indian school construction needs. Administration witnesses, however, readily admitted that PL 815 appropriations had, in the past, been grossly inadequate with the result that a major need had gone unanswered in the area of Indian school construction. Sidney Marland, Commissioner of Education for HEW, detailed the extent of the PL 815 construction request backlog (approximately $50 million in 1971) in a table submitted for the record at the Senate Committee on Labor and Public Welfare hearings,[28] but recommended only increased appropriations as a solution. William Youpee, however, objected to the absence of a new school construction authorization in Title IV,[29] as did William Demmert of the NIEA. Dr. Demmert urged a new authorization for Indian school construction and/or an overhaul of PL 815 making Indian schools a priority under that law.[30] Indian witnesses appeared to be generally unimpressed both with claims that PL 815 could be expected to meet Indian needs and with claims that a Title IV school construction provision would duplicate authority existing under PL 815.

Office of Indian Education, National Advisory Council on Indian Education

This tension between unmet Indian needs and the administration's desire to avoid "duplication of effort" among Federal programs and agencies was a major factor in discussion of the Office of Indian Education which

Title IV established in the US Office of Education. Commissioner Sidney P. Marland of the US Office of Education was especially adament in opposition to the creation of this new office,[31] maintaining that existing agency structures were adequate to perform the functions which were ultimately delegated to the Office of Indian Education.[32] Likewise, the Navajo Tribal Council[33] and the National Congress of American Indians[34] opposed the measure as fragmenting the responsibility of the BIA for Indian education. Other Indian groups, however, declared themselves in favor of the new office, including the Association on American Indian Affairs[35] and the United Native Americans.[36] Lehman Brightman, the president of this latter group, was especially emphatic in his conviction that the responsibility for Indian education should be removed, as much as possible, from the ossified, paternalistic structure of the BIA.

Title IV, Part D, which creates the Office of Indian Education also provides for the establishment of the National Advisory Council on Indian Education, which, itself, was the subject of considerable adverse comment from Indian groups who tended to view the Council as a substitute for true self-determination. Among the varied groups who opposed the creation of the Advisory Council were: NCAI,[37] The Navajo Tribal Council,[38] DHEW,[39] and Interior.[40] Other witnesses, including the All Indian Pueblo Council,[41] California Indian Legal Services,[42] and Americans for Indian Opportunity Action Council,[43] approved of the National Advisory Council concept but felt that the Council should assume full supervisory (rather than mere advisory) responsibility for Indian education programs.

Indian Self-Determination

The late Ned Hatathli, President of the Navajo Community College, expressed a commonly repeated objection to Title IV, Part D when he suggested that the provisions which require parent and tribal participation in the design of Title IV programs were vague, weak, and subject to abuse. Mr. Hatathli further declared that local Indian groups should be given a voice in the hiring and firing of teachers employed in BIA schools and JOM programs.[44] This demand was reinforced by the testimony of Dillon Platero, supervisor of the Rough Rock Demonstration School, who noted that fewer than three percent of the teachers of the Navajo reservation were, themselves, Navajos.[45] Mr. Platero suggested further that these Navajos who were employed on the reservation were subject to discrimination in promotion to administrative and supervisory positions. Administration (i.e., BIA) witnesses responded to this line of criticism by asserting that the administration was taking action to redelegate authority to the operating level in its education system.[46] Senator Mondale, however, pursued this issue with one BIA witness (Commissioner Bruce) who admitted that only 650 out of 55,000 students in the BIA system attended locally controlled schools.[47] Senator Mondale responded to these revelations by expressing his support for general local control of hiring and firing as well as the suspension of civil service hiring procedures in the case of Indian teachers.[48]

Beyond narrowly drawn demands for specific rights such as local control of hiring, curriculum, etc., the Title IV hearings saw much strong support for the idea of direct funding flow from the Federal government to the local education or tribal unit. Mr. Ned Hatathli argued that direct funding to the tribe rather than Federal grants to "State and local education agencies" would substantially alleviate some of the most pressing fiscal difficulties of the Navajo Community College.

James McClarey (of the New Mexico State Department of Education), however, stated that his department opposed all attempts at bypassing the States by giving Federal money directly to tribes. He declared that his department has "the legal responsibility" for all education programs in his State and that bypassing his agency would therefore be improper.[49] Congressman Meeds met this statement by quizzing Mr. McClarey on the admitted misuse of Johnson O'Malley funds by his department.[50] Myron Jones, Director of the Indian Education Training, Inc. in Albuquerque followed up on this questioning with a statement in which he assailed State departments of education for their widespread misuse of JOM funds and recommended "direct funding" and full Indian self-determination as the only cures for this abuse.[51]

JOM Focus

Myron Jones, in his above noted statement, detailed what he felt were the three most common types of JOM fund misuse. These were:

1. A situation in which JOM money is used to bring a district's general programs up to the minimum State standards.

2. A situation in which the district's general program is above minimum State standards but JOM money is used to support supplemental programs in amounts which are out of proportion to the number of Indian children who benefit from those programs.

3. The absence of adequate parent advisory involvement in program implementation in contradiction of the State's JOM proposal and contract.

Mr. Jones continued stating that nothing short of complete Indian self-determination in education would suffice to cure these ills.[52] This view was substantially echoed by a number of other Indian witnesses including Tom Daley, Governor of the Laguna Pueblo[53] and William Youpee of the

National Tribal Chairman's Association.[54] Senator Edward Kennedy, moreover, made a statement on self-determination and JOM abuses which substantially paralleled the position taken by Myron Jones.[55]

Defining "Indian"

The last major topic to be discussed in connection with the Title IV hearings was the definition of "Indian" which determines who exactly will be eligible for benefits under the bill. Not surprisingly, reservation Indians tended to favor confining the term to enrolled members of Federally recognized tribes. Among those subscribing to this view was Peter MacDonald, Chairman of the Navajo Tribe.[56] On the other hand, California Indian Legal Services favored the census definition of Indian ("anyone who is ¼ Indian blood, or is known as an Indian in his own community") which would embrace terminated tribes and urban Indians.[57] As noted in the first portion of this paper, the definition of "Indian" finally adopted by Title IV is a broad, inclusive term which specifically aims at providing aid to "terminated" and urban Indians as well as enrolled reservation Indians.

Notes to Title IV (The Indian Education Act of 1972) of PL 92-318

1. S. Rep. No. 91-501, 91st Cong., 1st Sess. (1969).
2. S. Rep. No. 92-384, 92d Cong., 1st Sess. 13 (1971).
3. S. Rep. No. 91-501, supra note 1, at 110.
4. S. Rep. No. 91-501, supra note 1, at 111.
5. S. Rep. No. 511, 73rd Cong., 2d Sess. (1934).
6. S. Rep. No. 91-501, supra note 1, at 110.
7. S. Rep. No. 92-384, supra note 2, at 13-15.
8. Indian Education Act, Pub. L. 92-381, June 27, 1972, 86 Stat. 235 §453.
9. Id. §305(b)(2)(B).
10. Id. §303.
11. Education Amendments of 1974, August 21, 1974, Pub. L. 93-380 §632(b), 88 Stat. 586.
12. S. Rep. No. 92-384, supra note 2, at 18.
13. Id. at 72.
14. Id. at 17.
15. Id. at 27.
16. Id. at 18.
17. Id. at 14.
18. S. Rep. No. 92-384, supra note 2, at 20.
19. Id.
20. Education Amendments of 1974, August 21, 1974, Publ L. 93-380 §631 (a), 88 Stat. 585.
21. Id. at §631(b), extending Pub. L. 92-318 §303 (A) (1).
22. Id. at §631(a), amending Elementary and Secondary Education Act of 1965, Pub. L. 89-10 §810 (f), 86 Stat. 339.

23. Education Amendments of 1974, August 21, 1974, Pub. L. 93-380 §632 (b).

24. S. Rep. No. 92-384, *supra* note 2, at 71.

25. *Hearings on S. 2482* at 42.

26. *Hearings on S. 2724* at 83.

27. *Id*. at 85.

28. *Hearings on S. 659 and Related Bills Before the Subcomm. on Education of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 1st Sess. 1933 (1971) /hereinafter cited as *Hearings on S. 659*/.

29. *Hearings on S. 2482* at 43.

30. *Hearings on S. 2482* at 55.

31. *Hearings on S. 2724* at 101.

32. *Hearings on S. 659* at 1730.

33. *Id*. at 153.

34. *Id*. at 1794.

35. *Id*. at 1869.

36. *Id*. at 1907.

37. *Hearings on S. 2724* at 33.

38. *Hearings on H.R. 8937 and S. 2482 Before the House Comm. on Education and Labor*, 92d Cong., 1st Sess. 61 (1972) /hereinafter cited as Hearings on H.R. 3837, S. 2482, and S. 8937/.

39. *Hearings on S. 2724* at 22.

40. *Id*. at 18.

41. *Hearings on S. 2482* at 61.

42. *Hearings on H.R. 8937 and S. 2482* at 231.

43. *Hearings on S. 659* at 1830.

44. *Hearings on H.R. 8937 and S. 2482* at 67.

45. *Id*. at 88.

46. *Hearings on S. 659* at 1741.

47. Id.

48. Id. at 1757.

49. Hearings on H.R. 8937 and S. 2482 at 112.

50. Id. at 115.

51. Id. at 139.

52. Hearings on S. 2482 at 66-67.

53. Hearings on S. 2724 at 114.

54. Hearings on S. 659 at 1727.

55. Hearings on H.R. 8937 and S. 2482 at 218.

56. Id. at 231.

57. Id. at 522.

THE INDIAN EDUCATION ASSISTANCE ACT, PL 93-638 TITLE II, (A) 1975

Introduction

The Indian Education Assistance Act, Title II, is the second part of the Indian Self-Determination and Education Assistance Act of 1975. Title I of this act recognizes and supports the need for Indian self-government, while Title II recognizes that Indian self-determination is dependent upon Indian control of Indian education. This report focuses on Title II of the Act because it essentially reforms the Johnson O'Malley Act of 1934 by providing a new design for Indian education contracting.

General Background

In his testimony on PL 92-318, Sidney Marland, the Commissioner of Education for HEW, said that the reform of the Johnson O'Malley Act was the greatest single priority in upgrading Indian education in the U.S.[1] Mr. Marland's testimony echoed a growing concern among Indians and Indian organizations over the widespread abuse of the Johnson O'Malley Act stemming from the misuse of JOM funds for purposes unrelated to the education of Indian children. Another witness in the hearings on PL 92-318, Myron Jones, elaborated on this proposition by describing the three most common types of abuses of Johnson O'Malley, i.e.[2]

> (1) Obvious use of JOM funds as general support (i.e.--JOM funds used to bring a district up to State minimum standards).
>
> (2) Use of JOM funds to support special programs in amounts out of proportion to the degree of Indian participation in those programs.
>
> (3) Lack of Indian parent involvement in program planning in contravention of the State's JOM plan and proposals.

Two years later, hearings on S 1017 (the resolution which finally became PL 93-638) produced a plethora of testimony which tended to confirm all the worst suspicions concerning the frequency with which JOM funds were misused by State education agencies. James Hawkins, Director of Education, BIA, admitted frankly that there was no uniform criteria for the disbursement of Johnson O'Malley funds to the States and no uniform criteria for determining the purpose for which JOM funds might be used. When quizzed as to the reasons for BIA's failure to promulgate regulations to assure uniform distribution of JOM funds, Mr. Hawkins indicated that his department was concerned with the potential duplication of JOM services by HEW via Title IV of PL 92-318 and the consequent overlap of jurisdiction between the two agencies. Mr. Hawkins suggested that this situation could best be resolved by having HEW-OE issue regulations and then allowing BIA to tailor its own regulations to match HEW's. In the meantime, however, no regulations or formal bureau policies could be said to guarantee uniform distribution of JOM resources.[3] Compounding the opportunities for abuse which this administrative uncertainty produced was the fact that BIA rarely, if ever, took immediate action to recover misused JOM funds from State contractors.[4]

Perhaps the single most important factor in this unenviable history of JOM irregularity was the sweeping vagueness of the Johnson O'Malley Act itself, and the glaring need for a fair formula which could provide for the equitable distribution of JOM funds, as suggested by Senator Abourezk, a sponsor of PL 638.

Statutory Structure, 93-638 Title II, Part A.

Section 202 of Title II, PL 638 adds three new sections to the

Johnson O'Malley Act. The new Section 4, as added by PL 638, provides that prospective JOM contractors must submit to the Secretary of the Interior an education plan which "adequately addresses the educational needs of the Indian students who are the beneficiaries of the contract" and assures that the contractor is capable of carrying out this plan. The most significant portion of this Section, however, is the clause that requires that, "where students other than Indian students participate in such programs, money expended under the contract shall be prorated to cover the participation only of Indian students". This Section, of course, specifically addresses the question of the "dilution" of JOM moneys by their use to fund either general support programs or special education programs in amounts disproportionate to the numbers of Indian children participating in those programs: types #1 and #2, respectively, in Myron Jones' catalogue of JOM abuses (supra).

The new Section 5 added by PL 638 provides that the Secretary shall not enter into any JOM contract unless that contract has been approved by a local committee composed of parents of affected Indian students. Section 5 does not demand that such a local committee be elected if the local school board is composed of a majority of Indians and it allows local Indian committees elected under the Indian Education Act of 1972 (Section 305 (B)(2)(13)(ii)) to be utilized for purposes of this section if the affected tribal governing body so desires.

Witnesses from a large number of Indian organizations spoke out in support of the "Parent Advisory Committees" concept. Lorraine Misiaszek, Acting Director of Advocates for Indian Education of the Northwest Tribes, concluded her testimony on S 1017 by saying,

> I would like to impress upon the committee how strongly Indian parents feel about any changes concerning Johnson O'Malley programs. They have stated their belief that these programs requiring JOM parent committee sign off approval are the only ones that they can remotely call their own in the sense that these programs reflect their wishes or concerns.[5]

Similarly, Charles Trimble, Executive Director of the National Congress of American Indians, stated that,

> The powers of such a community education committee should be considerable and should be spelled out to provide for optimum voice for the Indian community. Among those powers should be the authority to approve or reject all proposed programs for contract under these provisions for that district.[6]

Another plea for real power to be vested in the advisory committees came from Lucy Covington, First Vice President of the Northwest Affiliated Tribes, who said,

> Under the Johnson O'Malley Act, parent advisory committees have been frustrated by their purely advisory capacity. They have not had the authority or power to implement the parent advisory committee's desired programs.[7]

Section 6 of the Title II Johnson O'Malley revision provides that the Secretary may, in his discretion, reimburse State school districts for educating "out-of-State" Indians who reside in Federal boarding facilities for the purpose of attending public school in that State. Section 203 of Title II (A) directs the Secretary of the Interior, in consultation with the Secretary of Health, Education, and Welfare, to prepare the study to which this instant paper is directed. The legislative intent behind this last section is interwoven with various statements of Congressional displeasure with the failure of BIA to issue comprehensive JOM regulations and the failure of that Bureau to commence a study, such as this one, on its own initiative. Perhaps the legislative intent and import of this section is best seen in Senator Jackson's analysis from the Congressional Record:

> The provision contained in Title II ordering a study by the Department of Interior is of particular importance to the future of Federal Indian education policies.
>
> The significance of this mandated study lies in the fact that it represents a continuing desire on the part of the Congress to find an acceptable legislative alternative to the existing method for allocating Johnson O'Malley funds.
>
> By requiring a legislative proposal for the Secretary of Interior by October 1, 1975, the Congress is making it fundamentally clear that it intends to proceed to reform the Johnson O'Malley program.
>
> Yet, of even more significance is the requirement that the possible duplication of Johnson O'Malley, Title I of ESEA, Title IV, Public Law 874 and 815 be analyzed. The results of this part of the study may cause the Congress to consider an even more comprehensive funding approach to eliminate duplicate funding, conflicts in programs, and the multiple involvement of various Federal bureaucracies in administering these programs. [8]

Legislative History

The genesis of PL 93-638 occurred with President Nixon's message to Congress on American Indians on July 8, 1970. The thrust of this message was a new policy of "self-determination without termination," a policy which contrasted sharply to the Federal termination experiments of the 1950's. [9]

> Indian self-determination, in concept, as official policy was proposed through President Nixon's Message to Congress on American Indians on July 8, 1970. The message contained a central theme of self-determination without termination. This new policy was offered as an alternative to the philosophy embodied in H. Con. Res. 108 of 1953, which stated that Federal policy was to terminate Federal responsibilities and services to Indian tribes as promptly as possible.
>
> Under this newly proposed policy, Indians were to be afforded broad latitude in control and operation of programs administered by the Bureau of Indian Affairs and the Indian

Health Service. Three proposals in the President's legislative package were specifically designed to implement the Indian self-determination policy, as follows:

(1) Require the Secretaries of the Interior and Health, Education and Welfare to transfer to Indian tribes, at their request, control and operation of Bureau of Indian Affairs and Indian Health Service programs and services;

(2) Permit Indians to contract with the Bureau of Indian Affairs for the administration of Johnson O'Malley (JOM) education funds, and to authorize the detail of commissioned personnel of the Public Health Service to Indian Tribal organizations which assume the control and management of Indian Health Service programs; and

(3) Provide for continued fringe benefits (such as compensation for injury, retirement, life insurance and health benefits) to Federal civil service employees who transfer to Indian tribal organizations to perform the services they formerly performed as government employees.[10]

No action was taken on these three proposals during the 91st Congress, and similar legislation was introduced in the 92nd Congress. The Indian community, however was generally opposed to the Administration's proposals, and Senators Jackson and Allott responded by introducing an alternative bill, S 3157. During hearings on S 3157 and the Administration proposals, spokesmen for most major Indian organizations expressed a preference for S 3157.[11] S 3157 was passed by the Senate (August 2, 1973), but the House took no action on the bill.

S 1017, the bill which finally became PL 93-638, was introduced on February 26, 1973 by Senators Jackson and Abourezek. Title I of this bill essentially embodies S 3157.[12] The bill passed the Senate on February 8, 1974, but on February 18 this action was vacated and the bill sent back to Committee at the request of Senator Jackson.[13] The Committee reported S 1017 back to the Senate floor on March 20 with an amendment in the nature of a substitute which extensively redrafted Title II, Part A.

Title II, Part A, in the form in which the Committee originally reported it, completely repealed the Johnson O'Malley Act of 1934 and substituted an entirely new scheme for educational contracting[14] for Indian pupils in public schools. This new design for education contracting embodied a number of provisions which were designed to obviate abuses in the distribution and expenditure of JOM funds, the most significant of these reform provisions being a new formula for contracts between the Secretary of the Interior and the States. While this formula is too intricate to discuss in detail here, its signal feature was a requirement that school districts in an Indian affected area treat Indian children on the same basis as any other residents of the State with respect to per-pupil expenditures not covered by JOM. The potential problems with this approach to revising JOM were numerous. The wide panoply of objections to this legislative formula approach to JOM reform is suggested by the testimony of Joe Upicksoun, Chairman of the Education Committee of the National Tribal Chairmen's Association.[15]

> The National Tribal Chairmen's Association supports the provisions contained in Title II. It is in line with the President's Indian message of July 8, 1970, in which he discussed the need to make certain that Johnson O'Malley funds come under the influence of Indians as to the ways that the money is spent. The President proposed that the Congress amend the Johnson O'Malley Act so that funds could go directly to Indian tribes and communities. Title II would give the Secretary of the Interior explicit authority to contract directly with Federally recognized Indian tribes and tribal organizations.
>
> While this section attempts to provide a formula which can be the basis for distribution of Part A funds, we believe that the formula will be too cumbersome to be useful or to be effective. Some prospective contractors may simply choose not to deal with such a formula and not contract for Part A funds. Some prospective contractors may not be able to meet the property tax rates of five non-Indian districts of comparable sized enrollment and, therefore, lost Part A funds. We recommend that Part A not be enacted and that the Johnson O'Malley

> Act be amended to include language that would explicitly authorize contracts with Indian tribes and tribal organizations.

Another commonly heard objection to this draft of 1017 (II) (A) was the fear of many Indians that a new education contracting structure would not produce appropriations as readily as the venerable Johnson O'Malley Act. Thus Charles Trimble of the National Congress of American Indians testified that,

> This apparent loyalty to Johnson O'Malley is somewhat tinged by caution and weariness. We have just gotten the feel of the Johnson O'Malley Act to where we can somewhat control it despite its inadequacies. Appropriations for Johnson O'Malley expenditures in the BIA budget are traditionally approved and we have come to plan on them year to year.
>
> We are not adverse to change but you can understand our caution, for we have seen the appropriations for the widely praised Indian Education Act of 1972, enacted and appropriated last year, impounded for the greater part of the year and released just in time to be spent within the fiscal year. [16]
>
> We are concerned that this may be administration policy for all new programs and hence we feel that the rescission of the education programs of the act of April 16, 1934, may prove to be premature as it is now scheduled in this bill.

Despite initial objections, S 1017 in its final form drew general, if not entirely uncritical, support from most Indian groups. The bill became law on January 4, 1975.

Notes to Public Law 93-638

1. Hearings on S 659 Before the Senate Committee on Labor and Public Welfare, 92nd Cong., 1st Sess., at 1710 (4/28/71).
2. Hearing on S 2482 Before the House Committee on Education and Labor, 92nd Cong., 1st Sess., at 137 (1/3/71).
3. Hearing on S 1017 Before the Senate Committee on the Interior and Insular Affairs, 93rd Cong., 1st Sess. (6/1/73), hereinafter cited as 1017.
4. *Id*., at 89
5. 1017, *supra* note 3, at 157.
6. *Id*., at 163.
7. Id., at 201.
8. Cong. Rec. 22214 (daily ed. Dec. 19, 1974).
9. S Rep. No. 762, 93rd Cong., 2nd Sess. 16 (1974).
10. *Id*., at 16.
11. *Id*.
12. *Id*., at 17
13. S Rep. No. 682, 93rd Cong., 2nd Sess. 206 (1974).
14. 1017, *supra* note 3.
15. *Id*., at 112.
16. *Id*., at 159.

IV. PROPERTY TAX AS A SOURCE OF FUNDING FOR PUBLIC SCHOOLS ON OR NEAR RESERVATIONS

PROPERTY TAX: AN OVERVIEW

In many school districts, property tax is the main source of revenue for the support of elementary and secondary education. Real property tax is the tax collected on land and those things attached to land--houses, buildings, barns, fences, etc. The distinction between real and other kinds of personal property taxes is often arbitrary. For example, mineral leases are real property, but residential leases are personal property. While instinct may suffice in most cases, the particular laws of the jurisdiction one is in should be investigated. In most of the following discussion we will be dealing with taxes on real property.

In general, the collection of property tax follows nine steps:

(1) Budgeting: Determining the needs of the school district.

(2) Appropriation: The formal enactment into law of the decision to spend the money.

(3) Levy: The specific amount of tax to be collected.

(4) Assessment: Determination of the value of each parcel of land on the tax rolls.

(5) Review of Assessment: Actually an appeal process for the taxpayer who disagrees with the value determined by the assessor.

(6) Equalization: The raising or lowering of assessed values to bring them into line with those of surrounding areas.

(7) Computation of Tax: Multiplication of the total assessed value of the property times the tax rate.

(8) Payment: Usually voluntary.

(9) Proceedings to Enforce Payment of Taxes: Often features a sale of

the property to satisfy the taxes owed.

Property taxes are unique in that an assessment process is used to determine the amount of tax owed. In contrast, sales tax of a fixed percentage is collected from either the buyer or the seller with no assessment involved.

According to Federal law, a tax assessor acts in a judicial capacity when performing his duties. Anyone acting in a judicial capacity must (a) give notice of the action; (b) give the taxpayer a chance to be heard, and (c) give the taxpayer a chance to challenge. A tribe seeking to collect a property tax would have to provide the people to administer the nine steps named above and to furnish the protections against arbitrary judicial proceedings by the Constitution. For many tribes, therefore, taxing property on the reservation may be more trouble than it is worth.

Two factors must be kept in mind. First, the assessment of the market value, although generally following standardized procedures, is essentially a judgment call. Thus the assessment of property is rendered vulnerable to abuse and error. Second, the tax rate varies from district to district, as does the assessed value of apparently comparable pieces of property.

Real property is rarely taxed on its full market value. Rather a fraction of that full market value defines a total assessed valuation.

States vary in the fraction they use to determine the assessed valuation for tax purposes as shown in Table 1 . The most accurate way of checking on the assessor is by calculating an assessment: sales ratio. Clearly, if the ratio is quite low for a given county, property owners are escaping taxes. Studies show that the further a State varies from true market value as the basis of taxation, the smaller the assessment : sales ratio becomes. Remember these ratios are based on a local assessor's full market assessment before the fractionation, divided by the actual sales price of that property. Clearly, some capacity for mischief is introduced by fractional assessment.

The fraction of total market value varies within a single State by means of the "extra-legal" classifications of property. Table 2 shows such assessment percentages for the State of Arizona. The assessment percentages for utilities and producing mines contrasts sharply with that for producing oil and gas interests. Arizona has no producing oil and gas fields--not because of a high tax rate but because the oil just isn't there. Extensive exploration in the Black Mesa Basin was not discouraged by a full market valuation, so it is possible that high tax rates do not discourage other forms of exploration.

The fractions used by an individual State reveal much about a given State's attitude toward industry. In addition, Arizona and New Mexico have no severance tax on mines and oil fields, and allow utilities to pass property taxes on to the consumers automatically. Alaska values all real property at 100%, but assesses the pipeline centrally and allows no more than a 15 mill State and a 5 mill local levy on it.

Arizona applied a form of assessment sales ratio, called "trending," to residential property--but not to mines and utilities.

Site selection of utilities is often swayed by the attraction of a low tax rate in a sparsely populated region. A utility company does not have to locate near an ore-body like a mine does. It can choose an area with few students to support with its tax bill. This is sound business practice, but it destroys any vision of local control in the affected districts. The vast majority of local tax dollars that go to support the schools are then not paid by the parents of school children but by large corporations. Local control then becomes corporate control.

The property tax issue is not that of individual property owners paying taxes on their houses and land to support Indian students who pay no property taxes. Our issue involves large corporations with fixed assets concentrated in sparsely populated counties and exerting an overwhelming influence to keep tax rates low. These companies have threatened to move off Indian reservations if they do not get tax relief. However, in many instances, the companies are not being taxed at even the State average, indicating that a move off the reservation might well increase their tax burden.

In determining whether to raise local taxes, one should decide whether the amounts collected are worth the dangers of "scaring off" development. Areas of low assessed valuation will have to realize that property tax evokes resentment far beyond actual dollars involved. It is voluntary, paid in a lump sum, and can be appealed.

FINDINGS

Our investigations dealt with the issue of property tax and its contribution to the education of Indians in public schools; we found that property tax _is_ a major issue--far beyond its amount as a contribution.

Indian school districts may have low assessed valuations per pupil, but low assessed valuations per pupil are not limited to reservations. Albuquerque (See Table 45) with $9,887.12 per pupil compares favorably with both urban Mesa, Arizona at $11,166 and nonurban Fort Thomas in Arizona. Some reservation districts are quite high--for example Hardin, Montana and Monument Valley, Arizona. There is no generalization one can make about reservation school districts. (See Tables 27, 45, 51, 58, 63.)

State governments, Arizona in particular, would have us believe that Indian reservations contain no taxable property, and that the Federal aid in lieu of taxation (PL 874) does not fill the gap. This generalization cannot be supported. Instead many districts have improvements on Indian land which account for most of the assessed valuation of the district. These improvements cannot be considered "Local non-Indian" contributions since (a) they occupy and sometimes impact Indian land, and (b) the tax is passed on to the ultimate consumer. Secondly, PL 874 at $510.17 (Arizona) is much higher per pupil than local tax per pupil (See Table 29).

The actual, dollar contribution of property tax money to the school budget varies with the State. Montana and Oregon require that most of the support come from local tax levy (See Tables 52 and 57). New Mexico requires very little. We speculate that Albuquerque is undervalued rather than excessively poor. Alaska requires local tax support when it is available, but in any event provides no less than 93% of its defined basic need. The actual role of property tax is dictated by the State, its attitude toward property tax, its own major source(s) of revenue, and finally its attitude toward Indians.

The final importance of property tax depends on the State plan. Montana, New Mexico, Idaho, South Dakota, Oregon, and Alaska have State plans that say in effect, "Do the best you can with your property tax," and for Indian districts, "with your PL 874, and we'll guarantee an amount to bring you up to a minimum." Arizona and Nebraska, by contrast, say, "Here is what you can expect from the State--no more, no less. If PL 874 does not supply enough to bring you up to minimum you must raise the balance from local tax levy or from Johnson O'Malley." Where either property tax or Johnson O'Malley must be used to balance a district budget, a confrontation between the taxpayer--often a large corporation--and the Indians is inevitable.

Furthermore, while forcing the districts to rely on impact aid for a considerable portion of the funding, no effort has been made in any of the JOM basic States to maximize the impact aid payments. There are four formulas for requesting PL 874 aid: (1) one-half of State average per pupil expenditure; (2) one-half of classes of State average per pupil expenditure, e.g., all elementary schools, all high schools; (3) one-half the national average if higher than the States; (4) direct comparison with available local funding in five comparable school districts within the State. This last formula requires the most work, but it also produces the highest revenue. The only apparent reason for not using the comparable districts formula is lack of skill in the intricacies of Federal funding, either at the district level or at the State PL 874 Desk.

Another problem, which exists in Arizona, is deficit spending. The school superintendent does not know (a) what the tax levy will be for the year he calculates a budget, and (b) how much Johnson O'Malley money he will receive. (See Table 34.) This combination of factors combined with permission to go into debt not only encourages poor cash management but virtually assures it. The deficit is to be made up the next year in local taxes, thus creating a situation where the tax rate might double from one year to the next.

Some school districts can help themselves by raising their local tax levies. (See Table 27.) Ganado could raise an additional $480,000 by bringing its tax rate up to $12/100. Drastic as it sounds, Indian Oasis paid a whopping $14/100 in an attempt to clear its deficit. In general, local school districts are not escaping taxes. The level of State support is clearly the cause of high local taxes.

The previous discussion has dealt exclusively with operational budgets. While PL 874 works well, PL 815 is prominent by its absence. Low total assessed valuation lowers bonding capacity which in turn severely limits a school district's ability to house its students. PL 815 is funded inadequately to meet Indian needs. If one accepts the need for PL 874 to remedy Federal land impact on taxation, the need for PL 815 is doubly implied. A low valuation reflects on bonding capacities and debt limits, and cannot easily be compensated with any other funds--local or State.

The impact of property tax on Indian economic development can be profound or trivial, depending on how you define economic development. Some outside industries would undoubtedly be frightened off by an increase in property taxes, particularly if they are unable to make a special arrangement with the tribe. For instance, motels, shopping centers and even utilities are sold to the tribe and then "leased back" to the original owner. The effect is to make the enterprise immune to taxation since it is tribally owned and on tribal land. But it also lowers the bonding capacity and local levy available to schools on that reservation.

Mines and large utilities are rarely leased back by the tribe. The reason is that utilities are allowed to "pass on" taxes to consumers as a matter of State policy--making them, in effect, tax collectors. Mines treat property tax as an ordinary cost of doing business. Even though utilities and mining companies would have us believe that property tax is a real deterrent, we cannot place much reliance on such statements. Utilities will continue to pass taxes along to the consumer and mining companies will continue to mine as long as they have "tonnage and grade."

Warnings to the effect that "We'll stop digging on the reservations" must be taken as idle--unless the companies make public discounted cash flow information about their ventures. Since discounted cash flow rates are a closely guarded company secret, this is unlikely.

Marginal ventures such as Fairchild Industries near Shiprock, New Mexico could be forced to cease operations on reservations, but marginal ventures are vulnerable to a large variety of exigencies. Only Montana and Alaska have severance taxes. New Mexico and Arizona have none. It appears that in Arizona mining companies would rather fight the Bureau of Indian Affairs for more Johnson O'Malley money than force the State of Arizona to increase State Aid to local districts. The State may have convinced them that additional expenditures might compel additional revenue--in the form of a severance tax.

In final analysis, what we chose to call "economic development," namely the development of Indian-owned businesses, is not affected by the property tax issue. Marginal non-Indian businesses may be threatened, but mines and utilities may only be annoyed. One situation bears watching, and may serve as a warning to tribes facing the Arizona style of economic development. Navajo Compressor Station is a postage stamp-size school district entirely surrounded by the Ganado school district (See Table 3). It exists to keep assets owned by El Paso Natural Gas off the Ganado tax rolls, and allows the company's people to support just their own children with their dollars. The district is only 1/4 mile on a side. This is reminiscent of Venezuela in the 1920's; tribes should have prior agreements from the company forbidding such gerrymandering.

Tribes may also impose a property tax. If they choose to do so there will be profound effects on both sovereignty and economic development.

First, the administration of a property tax requires a large bureaucracy for reasons cited earlier. Namely, in assessing a property value the assessor acts in a judicial capacity--which means that a hearing and appeal process must be maintained. Second, all property, Indian and non-Indian alike, must be taxed. Indian property-owners and tribal people in general would take a dim view of such a tax. Finally, litigation with taxpayers--and court fights with the States over jurisdiction--could easily consume any anticipated revenue from a tribal property tax. In short, imposition of such a tax might appeal to lawyers and activists preaching tribal sovereignty, but in our judgment the revenue would not justify the trouble.

Tribes, however, may be shirking a tax responsibility themselves. When a tribe buys a company--as when the Papago Tribe buys a utility company--they remove that company from the tax rolls. Other tribes buy and lease back in a conscious attempt to escape taxes. We feel that these enterprises should make a contribution to the school district in lieu of taxation. If we condemn non-Indians for escaping property taxes, we can hardly avoid citing Indian tribes for the same infraction.

Finally, we feel that some way must be found to make Federal funds paid in lieu of taxation carry some political clout for Indians. A taxpayer in a poor district has a louder voice in determining educational policies than does an Indian who may trigger more PL 874 alone than his white neighbor does tax money. Tribes could choose to make a contribution in lieu of taxes to help their local schools. This could be an important first step in improving State-tribe relations.

	Market Value	Assessed Valuation	Tax Rate Per $100	Tax Dollars Generated	Severance Tax	Sales Tax
New Mexico	$10,000	$ 3,333	$1.11959	$37.32	None	4%
Arizona	10,000	1,500	3.34+	50.10	None‡	3%
Alaska	10,000	10,000	.54*	54.00	60%, plus royalties	4%

Table 1. Comparison of market value, assessed valuation, tax rate, tax dollars generated, severance tax, and sales tax in New Mexico, Arizona and Alaska.

+State average in 1975

‡Arizona has a copper tax

*Approximate borough average

Property	Assessment Percentage
Railroad Operating Property	60%
Telephone and Telegraph Operating Property	50%
Pipe Line Operating Property	50%
Gas and Electric Utility Operating Property	50%
Water Utility Operating Property	50%
Community Antenna Television Operating Property	27%
Producing Mines	60%
Producing Oil and Gas Interests	100%
Residential	15%

Table 2. Assessment percentages by class of property for the State of Arizona.

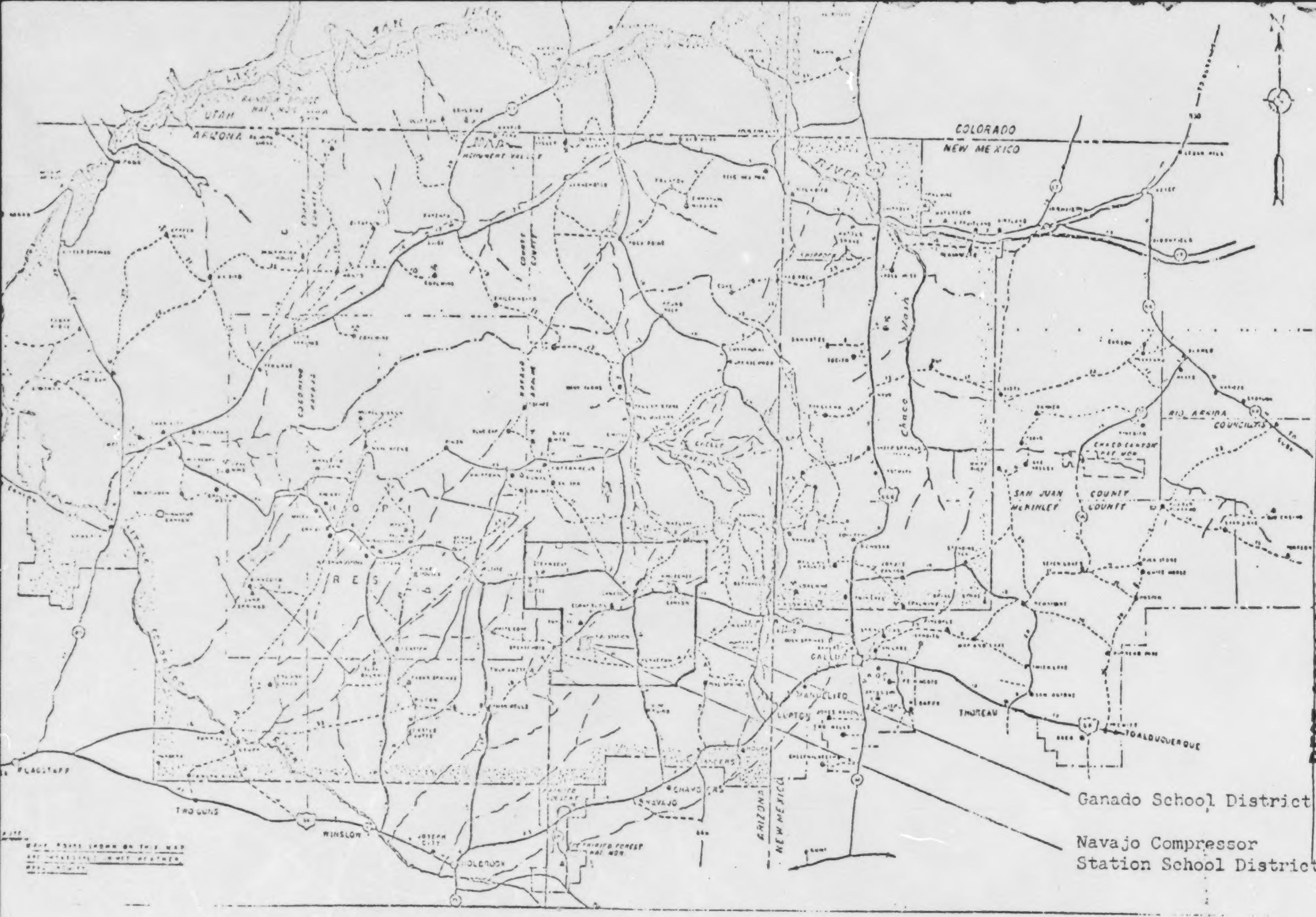
COLORADO
NEW MEXICO
UTAH
ARIZONA
SAN JUAN
RIVER
CHACO
SAN JUAN
MCKINLEY
COUNTY
COUNTY
R E S
GALLUP
MANUELITO
LUPTON
THOREAU
TO ALBUQUERQUE
CHAMBERS
NAVAJO
FLAGSTAFF
TWO GUNS
WINSLOW
JOSEPH CITY
HOLBROOK
ARIZONA
NEW MEXICO
Ganado School District
Navajo Compressor Station School District

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Table 3. Map showing location of Navajo Compressor Station School District inside the boundaries of Ganado School District in Arizona.

V. JOHNSON O'MALLEY FUNDS

THE QUESTION OF BASIC SUPPORT

"Need." What is it, who has it, and who defines it?

In 1972, Earl Waits, an Indian attorney with California Indian Legal Services, researched all State plans in a special project for National Indian Leadership (now Indian Education Training). One of his conclusions was that the primary function of State plans was to enable States to define need according to their perceived self-interests. "In effect," he said, "they are writing their own private JOM law through the plans."

There are now only five States that claim to need Johnson O'Malley for basic support. In 1974-1975 Nebraska claimed need for three out of five eligible districts. Arizona claimed financial need in 12 of the 17 eligible districts and they defined eligible as major impact. (Arizona State plan: 60% or more Indian, or on or near a reservation.) The five other major impact districts did not apply. They had several other districts which would have been eligible by the standards in any other State plan, but this is an example of de facto State run Federal legislation. Iowa's one eligible district used JOM to pay partial tuition for Indian students who are technically considered outside the district. State aid and PL 874 make up the rest of the Indian tuition (See Iowa summary). Minnesota had five basic support districts out of a total of 29 eligible. South Dakota had seven basic support districts out of 23 eligible.

The September 1974 JOM regulations (CFR Title 25, Part 33) set the following conditions for receiving basic support;

(2) For operational expenditures. All funds for operational expenditures shall be used to meet educational standards established by the State and only if provided for in the educational plan required by §33.4(a) and only under extraordinary or exceptional circumstances. The contract may authorize operational expenditures only when the school district establishes all of the following:

(i) That it cannot satisfy the applicable minimum State standards in the absence of such funds;

(ii) That it has made a reasonable tax effort, with a mill levy in support of educational programs at least equal to the State average;

(iii) That it has fully utilized all other sources of financial aid, including all forms of State aid, Public Law 874 payments, etc. The State aid contribution per pupil must be at least equal to the State average; and

(iv) That there exists at least 70 percent eligible Indian enrollment within the school district or within any particular school served.

Funds authorized under this part shall supplement, and not supplant, State and local funds. Each contract shall require that the use of these funds will not result in a decrease in State, local or Federal funds which, in the absence of funds under this Part, would be made available for Indian children. In no instance shall these funds be used as payment for capital outlay or debt retirement expenses.

(d) Equal educational opportunities.

(1) Contracts shall specify that State school districts receiving funds under the provisions of this Part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this Part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or school enrolling such Indians.

Since these regulations did not go into effect until school budgets for 1974-1975 were established, it is helpful to look at the regulations that were in effect when the budgets--including Johnson O'Malley--were set.

> 33.5 (c) Equal educational opportunities.
>
> Contracts shall specify that education for Indian children in public schools within the State shall be provided upon the same terms and under the same conditions that apply to all other citizens of the State.
>
> 33.5 (d) Uniform application of State law.
>
> States entering into a contract under the provisions of this part shall agree that schools receiving Indian children, including those coming from Indian reservations, shall receive all aid from the State, and other proper sources other than this contract, which other similar schools of the State are entitled to receive. In no instance shall there be discrimination by the State or subdivision thereof against Indians or in the support of schools receiving such Indians, and such schools shall receive State and other non-Indian Bureau funds or aid to which schools are entitled.
>
> 33.5 (e) Educational standards.
>
> The State shall provide in all schools that have Indian pupils adequate standards of educational service, such standards to be equal to those required by the State in respect to professional preparation of teachers, school equipment and supplies, text and library books, and construction and sanitation of buildings.

Although the earlier regulations do not use the word supplant, the language makes it clear that Johnson O'Malley is not supposed to replace money that would be made available by the State or other proper sources if there were no BIA money. It is worth noting that these regulations had been in effect since 1958.

The "need" for Johnson O'Malley created by the withdrawal or simple absence of money that would normally be present is not only not an authentic need, it is illegal. Yet the State of Arizona which has used more basic support money that any other State has consistently violated this principle. Until 1971, JOM was used at a substitute for State equalization funds in major impact districts. The State paid equalization on a per capita basis only for non-Indians in those districts. What should have been the Indian per capita equalization was paid out of JOM. The result is that the BIA money did not fill Indian needs or Indian district needs. It did save the State of Arizona millions of dollars.

Beginning in school year 1974-1975, the State of Arizona developed a new funding system through which the State would pay a gradually increasing share of all school district costs. Although both Johnson O'Malley and PL 874 form a considerable part of operational budgets in major impact Indian districts, under the State formula they are not counted as part of the budget cost level. The State plans to add an increasingly larger equalizing factor to this budget cost level so that at the end of the five years, districts with considerable Federal funding will catch up with non-Federal districts and achieve what Arizona calls a basic support level.

Until 1979-1980 comes around, the districts with substantial Federal funding will lose out by this system. At the same time, the districts, many of which rely on JOM for as much as 25% of their operating budget, are in "need" of basic support. A State formula that included the PL 874 and JOM actually spent during the base year 1973-1974 would alleviate that need. It is the formula, not the presence of Indian students or tax exempt land that creates the "need." (See a detailed explanation of this formula in the Arizona State report.)

It is difficult to see how the State funding system does not directly violate both the spirit and letter of pre-1974 and existing Johnson O'Malley regulations. Eight of the twelve basic support districts in Arizona were below the State average per pupil funding of $603.15 in

1974-1975 (See Table 29). This is another direct violation of existing regulations.

The State itself does not take the position that their system of phasing into actual costs over five years is justified on any long-range principle. It is a means of allowing State education appropriations to catch up to the new formula. (Interview with State Department of Education staff member, Charlotte Duvall) It is worth noting that only the heavy PL 874 and/or JOM districts are carrying this phase-in burden. It is also worth noting that there was a $6,000,000 surplus in the State's fiscal 1975 education budget.

The official position of the State relative both to the BIA and the Arizona congressional delegation has been that the Indian districts are in serious financial need for maintenance and operation. Evidence indicates that need was not created by the Bureau of Indian Affairs or any other branch of the Federal government.

In the area of school finance, South Dakota has several distinctions. It has the third highest percentage of local contribution in the country (72.0%). It has the 49th lowest State contribution (13.0%). It has the sixth highest (15.0%) Federal contribution. It is the only State in the country in which the Federal contribution exceeds the State contribution. The State ranks 45th in the country in terms of per pupil revenues measured as a percentage of State personal income (4.4%). (NEA statistics - all 1974-1975 except the last which is 1973-1974 based on 1973 income.)

Statistics would indicate that the problem is not the lack of Federal commitment, but a lack of State commitment. South Dakota also ranked seventh in the country in per capita property tax revenue of local government ($256) in 1972-1973.

One can assume, therefore, that districts that have neither a high Federal income nor large amounts of assessed valuation will be in financial trouble.

Of the seven districts which received JOM for basic support in 1974-1975, the two (Smee and Todd) with Indian majorities had the highest revenues per pupil measured three ways: (1) counting all sources; (2) counting all sources but JOM; (3) all revenue excluding categorical aid (See South Dakota State report and Table 75).

Only one of the seven districts (Sisseton) was below the average per pupil revenue of the State, and that district has an Indian population of 35%. Since only 12% of the district land is non-taxable, it's difficult to see how their financial problems have been caused by either Indian students or tax-exempt land. Their Federal revenue represents 43% of their income - well above the State average of 15%. Their State revenue is 21%, well above the average of 13%. Their local revenue is 36%, well below the State average of 72%.

This pattern follows for the other four basic support districts ranging in Indian population from 18% to 47%. They are all above the State average in their Federal share, and below the State average in their local share. It would be easier to argue that their financial need resulted from having too few Federally connected Indians.

Current JOM regulations requiring 70% Indian attendance were waived for five of the seven South Dakota districts. In view of their low percentage Indian populations and overall financial situations, it's difficult to see why the regulations should not be enforced in these districts. If their financial problem is caused by the lack of affluence among non-Indian taxpayers, and the State does not solve this through an equalization plan, there is no evident justification for a Bureau of Indian Affairs solution.

Iowa has a unique situation which is described in their State report. Their complexities transcend discussion, and their issues have no parallel. No one can compete with them for need, however, because under their present legal-nonlegal-extra legal status of conflicting and duplicate jurisdiction, Mesquakie Indian students would not be allowed to attend public school without partial tuition payments from JOM.

Nebraska, like South Dakota, occupies some interesting places in national statistics. They rank 35th in total revenue per pupil ($1,156--est. 1974-1975). They rank dead last in school revenue as a percent of personal income (4.0%). They rank first in the number of districts 1,208, but 32nd in ADM 316,751. They are fourteenth in percent of income from the Federal government (10.6%), sixth in percent of local revenue (66.5%) and 48th in percent from the State level (22.9%). They also rank last in local and State education revenues as a percent of personal income, (All statistics, 1974-1975 estimates from NEA).

There is a State policy of frugality relative to education costs. Nebraska seems to believe strongly in local control with local and Federal financing.

The Indian districts are all hurt by the lack of State funding, but it would be optimistic in the extreme to imagine that Nebraska will change its policy to meet the needs of 763 Indian students who represent .002 of the Statewide student population. Unlike their western neighbor, Nebraska's formula does not discriminate against Federal districts; it discriminates against all districts that don't have a substantial tax base.

We tried, unsuccessfully, to find out why Santee's funding is below the State average. Even if it weren't, their total funding would be well below the State average. They are in unmistakable financial need by every definition. Both Winnebago and Macy are above the State average per pupil revenue without Johnson O'Malley and both exceed the mean average pupil per district in Nebraska (262).

Table 78 shows that in Macy and in Santee, PL 874 funds combined with local taxes still leave the per pupil funding below the State average for local funds. There have been those who believed that such a situation was only a figment of early BIA regulation. It can happen in Nebraska because the local contribution is so extraordinarily high. Although this situation can temporarily justify the use of Johnson O'Malley, in the long run, it opens up another issue: maximum use of PL 874. (See discussion of various PL 874 funding formulas, pg.142.) Given the emphasis on local contribution in Nebraska, it would certainly seem worthwhile for Nebraska's Indian districts to utilize a formula for requesting PL 874 funds which yields the most impact aid.

Minnesota statistics show a sharp contrast to South Dakota and Nebraska. Minnesota ranks 12th ($1,577) in total per pupil revenue. They are 5th (6.4%) in per pupil revenue measured as a percent of personal income. Their local percentage of contribution is 37.1 which places them 35th, their Federal contribution is still lower (4.7%), 45th nationally, and their State percentage of contribution ranks 8th nationally (58.2%).

They have a very high Statewide commitment, and they are phasing in an equalization plan to be completed by school year 1977-1978 which takes credit for local resources, but not for PL 874. They also have a supplementary funding formula based on the percentage of district enrollment receiving Aid for Dependent Children.

Red Lake and Nett Lake (see Minnesota State report) are both well above the State average in per pupil revenue before they get Johnson O'Malley. In fact, both are above the 85th percentile within their State. If their funding is based on factors other than school district financial need, it is outside the scope of the present Johnson O'Malley law and regulations.

Mahnomen and Waubun are both school districts with a minority of Indians (11.4% and 19.0% respectively) and therefore outside allowable percentages for Johnson O'Malley funding. Both districts are below the State average funding, but presumably will not be when the equalization process is completed in three years. The basic support money ostensibly goes through the district directly to all-Indian schools. In both instances, there had been a move toward consolidation and the Indian schools were able to maintain themselves as separate entities only if they were to obtain BIA support for the increased, relatively uneconomic per pupil expenses necessary for their community schools.

This raises several questions: (1) What is the system used for guaranteeing that JOM funds do not supplant district funds that would otherwise be available to the Indian schools? There does not seem to be one; (2) Even if the expenses for a small rural school are higher, why is that a BIA problem? In most districts small, isolated schools require higher per pupil expenditures. When they are non-Indian schools, the district simply makes the necessary funding available. Why don't they do the same in Indian schools? If they accept the existence of the community school from an educational point of view, why don't they accept the attendant financial responsibilities? Both schools have considerable funding available to them through categorical aid: Title I of ESEA; Title IV--Indian Education

Act; JOM supplementary.

Pine Point is unique. They are a district within a district; they have complete local automony; they have 100% Indian enrollment; and they have special status as a community experimental school. Their Federal funding constitutes 84% of their total revenue, the highest percentage of any Indian district in the country. Their State share amounts to $475 per pupil as compared with a Minnesota average of $918 per pupil. They have no local revenue and $463 per pupil from PL 874. Johnson O'Malley constitutes 57% of their budget ($166,965). JOM contributes $1,653 a student. No other district in the country comes close to this funding level.

Without JOM they would have $1,225 a student, well below the State average, and as far below the average of schools their size as to make them disfunctional: Clearly this school was put together with JOM as the planned major source of income. If JOM were removed tomorrow, the district would collapse.

Legally this is a public school that is a part of the Minnesota system created by the State legislature. Financially it is a Federal school. It has no local revenue and its State share is less than the State's normal Part A, PL 874 payments. They have reversed the pattern of funding shares.

Paradoxically, because of the low Statewide commitment to this school (slightly more than half of the State's average), the district is technically ineligible under the new regulations. The very funding level that makes Johnson O'Malley essential also disqualified the district. Obviously a short-range solution is to waive the regulations. The long-range solution requires some Federal planning and Federal commitment.

If the Federal government is going to be in the business of providing base foundation programs for alternative or community schools--and they are when they provide 84% of the funding--they should make a real commitment to it so that those schools can have predictable and adequate funding. They should not, however, consider this funding in the same category as general JOM funding. There is no real justification for providing $1,600 per pupil to one school and $160 or $140 per pupil to another under the same legislative intent. It is unfair both to the competing low funded schools and to the schools that need a foundation for survival.

This same question should be examined relative to the schools within districts in Minnesota that need additional Federal support to maintain a separate identity. If they have become Federal schools for financial purposes, they too should be asked if they need new legislative authority and another kind of Federal school system.

FORMULAS FOR ALLOCATING SUPPLEMENTARY FUNDS

With few exceptions, districts that have received basic support money have received considerably higher funding than those that have used the money for supplementary purposes. It sounds justified. If you can't run a school at all without any amount of money, you certainly need it more than a special, supplementary program that has its basic program and needs only extra money. By extension, since basic support claims produce more money, why shouldn't Indian communities back claims of poverty without worrying about whether they're justified or not.

The first announced formula under the September, 1974 regulations took all proposed basic support payments off the top of the appropriation and then divided the remainder based on a State cost factor times pupils served (or projected) and gave these supplementary funds to the basic support schools as well. There have since been two other projected formulas, but the principle of taking basic support off the top and also distributing supplementary funds has remained intact.

In the past,although the districts receiving basic support seemed to have more money, supplanting was so widespread that more often than not there was less money that could be used for Indian education than in supplementary districts with lower allocations. Policy in 1975, however, guaranteed that basic support districts would have the same supplementary allocation as all other districts with similar State averages plus all basic support money.

It does not take advanced study in economics to know that more money is better than less money, and Indian tribes and communities have been put in the tactical position of supporting their school districts' cries of poverty caused by Indian enrollment, whether those cries could be justified or not. Those who don't, or more often who can't because of State policy have to stand at the back of the line and pick up leftovers.

Pine Point, Minnesota with its 54% JOM funding amounting to over $1,600 per pupil is operating on a commitment from the Bureau of Indian Affairs to provide massive foundation program style funding. Unless or until there is new authority, the Bureau should honor this commitment. It should be a part of a separate distribution system independent of the JOM formula. If there are other schools whose economic structure has been built with a heavy JOM commitment, that too should be honored--also out of a different pot.

Indian districts that have far more than the 70% Indian enrollment required for basic support, rightly or wrongly--usually the latter--relied heavily on JOM support, and it now constitutes up to 25% of their operating budget. A sudden removal of all funds might leave them in a serious jam and many probably need bail-out support. This, too, should come out of a separate allocation and not off the top of Johnson O'Malley. It's not possible to generalize about these districts. Their cushion, if really necessary, should be considered on an individual district basis.

If the State of Arizona altered its funding formula and gave school districts State funds based on their real expenditures (I.E., including PL 874 and JOM) in the base finance year (1973-1974), they would receive more basic support from the State than they were scheduled to receive from JOM under the highest basic support allocation. There are rumors of lawsuits that will force Arizona to do just that. The Bureau should be familiarized with the issue.

The Bordertown-peripheral dormitory program has also been funded under JOM, and this too has created funding inequities because the program has been based on a need for full basic support (and frequently then some) through tuition. Until 1975 no supplementary program funds were allocated for these students, and no educational plan was required. All contracts have been in the Southwest and all were negotiated through the Window Rock Area office. This program has been a victim of excessive generosity. In Albuquerque, 200 New Mexico Indians who boarded at the Albuquerque Indian School were enrolled in the Albuquerque school system. They were charged tuition at a rate that was $300 a head above the Albuquerque average, in spite of the fact that the State also paid 75% of the real cost. The result was that the school made a net profit of $825 for every New Mexico Indian student. PL 93-638 will ban a part of this new bounty hunting by providing for tuition payments only for out-of-state students. The rest of the issue will be discussed under administrative recommendations. As with basic support districts, this program should be funded from separate allocations, and supplementary programs should be available as they are for other JOM Indians.

Distribution of Supplementary Funds

The distribution of JOM funds has mystified statisticians (professional and amateur) for years. Several years ago many BIA people defended disparities by pointing out (accurately) that it was a need program, not an entitlement program. The difficulty with that explanation was either the absence of any definition of need or widely different definitions for each Area office.

A recent study by two school finance experts (M. David Alexander; Richard Salmon) found no patterns or correlation between funding levels and any definition of need. In most cases, the "need" was determined by State policy or the lack of a State policy and local definitions were made up after the fact to justify the random non-systems.

Since the Johnson O'Malley Act and its amendments essentially provide contracting authority for the Bureau for the educational needs of Indian students, four questions are posed. (1) Whose need? (2) How will need be defined? (3) Who will define it? (4) How can the funds be distributed most fairly? It is important to emphasize that JOM has not and should not be distributed in a manner similar to Title IV, Part A funds because it is not a public school entitlement in any way.

Who is eligible? Pre-1974 regulations tied JOM eligibility to the presence of large blocks of tax exempt land, on or near reservation residence, and public school need.

These regulations were seriously misleading on two counts. They ignored the real effects of PL 874 and implied that tax exempt land automatically created a financial problem. Tables 27and 45 and the previous chapter on local taxation demonstrate clearly that this is not necessarily true. The second problem, related to the first, arbitrarily converted JOM into a program solely related to declared public school needs rather than Indian needs.

The 1974 regulations correct these problems in two ways: they remove the anachronistic large blocks of land requirement and they State clearly that the money need not be spent in public schools.

The present system is logical and looks simple. Indians who are eligible for other Bureau services are eligible for Johnson O'Malley. That sounds obvious to the point of being superfluous, but it's not. Eligibility was previously determined by State Education Departments and school districts; e.g. if an Indian student from a reservation went to a school in Arizona that did not want to tax at the State average, that student received no JOM benefits regardless of how great his need might have been. Indian students who were eligible to go to BIA schools, eligible for BIA college scholarships, and eligible for graduate scholarships were not eligible for Johnson O'Malley only because of State and school district policies, and because the Bureau responded to that system and not to Indian needs. North Carolina Cherokees and the Iroquois of New York are eligible for BIA services, but they have not received JOM.

The simple injunction, "serve who you serve," and simple justice do, in fact, lead to an expanded service population. This has, unfortunately, produced some unfortunate debate within the national Indian community, at least some of it based on the old concept of public school entitlement wherever Indians appear.

Blatant self-interest ("If more people get into this pie, my slice will be smaller") assumes that appropriations will be static. This philosophy--which can be summed up as, "Right or wrong, I lucked out and to hell with you guys,"--may be understandable, but it cannot form the basis of a national policy. Apart from that, it is a mistake to plan on the assumption that JOM appropriations will be the same in spite of the fact that the level for the past five years has not even kept up with Indian student population growth or the inflation of education costs. Given the paucity of documented change from JOM, it has been extremely difficult to argue for increased appropriations. On local levels there are frequently success stories and indications of positive change. The national information is skimpy. Some contractors have given encouraging and detailed reports, some submit two pages to explain how $2,000,000 was used, and many submit no narrative reports at all. The same pattern has been true of financial reports. It has been difficult, if not impossible, to track the money spent under many of the contracts.

A well documented program, designed to serve Indian needs, does not guarantee increased funding. It radically increases the funding possibilities.

A real if unwarranted fear of the new service population is that boards of education in places like Chicago, New York, and Los Angeles will begin to count whatever can possibly pass for an Indian head and corner a major share of the money. (The size of the initial Spring allocation for New York State fed those fears, even though all the money was scheduled for reservation areas and none for New York City.) No board of education, particularly those in large urban areas, is entitled to or should have a per capita JOM allocation. The trick, simple in concept but complicated in execution, is to arrive at a distribution system that will make it possible for all parts of the country to have sufficient funds to meet Indian needs.

If a national per capita distribution is unjustified, so is the system called for under the 1974 regulations. Making available funding to all States based solely on their average educational costs produced an anti-equalization program difficult to defend. Example: New Mexico has the second lowest per capita income in the country and ranks (31st) well below the national average in revenue per pupil. It ranks third in the country in terms of public school revenue as a percent of personal income. There's not a lack of commitment to education. The State is simply poor. Should Indian students in the State therefore be penalized by receiving considerably less money than in another State which may have more total wealth, but is not even trying?

In fact, one could argue the converse. If an Indian student lives in a State that is above the average in income, but below the national average in commitment, should he be penalized?

Giving all States the same amount of money might have some equalizing effect, but it would be disastrous for a State such as Alaska where the educational costs are truly prohibitive. (The average salary of instructional staff in Alaska for 1974-1975 was $16,906 as compared with $8,338 for Mississippi.)

Nothing would be totally just, but a system that would make available to contractors funds based on State or national average would combine a large measure of equity with simplicity and predictability.

The tables following give projected figures for this. One inherent problem is that no one presently has an accurate count of the number of eligible Indian students. For this reason, the charts come in sets of two, one with the existing JOM population, the second with a projected increase of 22%. The increase would be based on numbers of children who are actually included in a proposed JOM program rather than merely a population count of those eligible for BIA services in a given area. An area with large numbers of presently excluded urban Indians would not receive a huge increase in funding simply based on those numbers. Tables 4 and 5 show allocations based on the present amount of JOM supplementary funding. The next two tables, Tables 6 and 7, show allocations using the present total JOM appropriation. The third two, show funding levels at 25% of total educational costs. The last two, Tables 10 and 11, show levels at 50% of total educational costs. The last two tables represent a marked increase in Johnson O'Malley funding, but assuming the presence of an effective reporting system, a significant increase is necessary if there are going to be results that can be reported.

One could go further with the distribution system and recommend allocations within contracts, providing for exact funding for each community or school district. This idea should be rejected. It would be both presumptuous and impractical to attempt this. Two years ago a New Mexico school district received $600,000 in JOM funds to meet special Indian needs. The district was then 84% Indian and they received the requested money even though they had a cash surplus of $2.2 million which represented more than 25% of their total budget. Contractors should have the option both of not giving funds when that will be meaningless or of giving funds in varying per pupil amounts when there is justification. Obviously, in a State such as Alaska the costs of educational services in Anchorage are considerably lower than on the North Slope. The contractor should have the freedom to deal with this issue, although no contractor should have the right to exclude or drastically short-change students without justification.

Distribution within a contract should also be rejected because it would reinforce the practice of treating Johnson O'Malley as a school district entitlement because the BIA would be determining funding before any Indian need had been established. Powers given to Indian committees both by regulation and law clearly indicate that even if all available funds go into a local public school system, there will no longer be a determination of needs without the involvement of the local Indian community. A precise district-by-district allocation would have the effect of seriously weakening all the new leverage.

This proposed distribution system is admittedly crude. It does nothing more than move toward equalization and at the same time take account of educational costs as they relate to average State costs. It is not a per capita distribution and although it makes funds available to meet needs within a contract, the decisions on how to define and meet those needs is left up to the contractor (as long as it can be justified).

It is recommended that the Bureau explore funding formula questions further with people who are acknowledged experts in school finance and can raise and hopefully solve some questions that are outside the limited time and resorces of this study.

If these 28 districts in five States are in need, who isn't? Answer: Everybody else. None of the other districts have a declared need for Johnson O'Malley programs, not because they are all relatively affluent by comparable standards, but because their lack of need has been defined for them. There are several ways of deciding against this need. (1) The most common, by far, is the State plan. Their States tell them that there is sufficient money; this is because they read their State Constitutions "providing free public education to everyone" as meaning just that, e.g. New Mexico. Other State plans (Montana, Washington) forbid spending money for basic programs because they have an equalization program, or are moving toward one (Montana, New Mexico). Still others take the position that all districts within their State have sufficient funds (however they got them) to run a basic support program (Nevada). (2) Community pressure within the State (e.g. Oklahoma) moved the State to take the position that there was simply no way to justify not providing a basic program for all schools and that, of course, included Indian schools. (3) New York State has a formula (Seneca Falls Formula) which guarantees districts 100% operational and maintenance funding for all New York State reservation children. They could hardly do this and then claim basic support need from Johnson O'Malley. (4) There are districts within the State of Arizona that excluded them selves, not because they considered themselves excessively wealthy but because the State required a tax levy equal to the State average and they did not wish to ask for it.

One clear conclusion of this study is that the philosophies, attitudes, legislation, funding formulas and policies of the States determine whether or not there is a declared need for basic support funding. The position of the Bureau has been simply to respond to the positions of the States. This has been true whether Johnson O'Malley funds are run by and through the State or through intertribal corporation. Nebraska and South Dakota had the first two intertribal JOM contracts, but both inherited long established, basic support funding patterns.

However well informed, competent or aggressive Indian communities might be, they cannot simply turn around State policy or shape legislative action. Arizona and South Dakota have the highest percentages of Indians in the lower forty-eight, but both are basic support States with highly questionable commitments to Indian education.

States that have no substantial equalization policy at all and by default discriminate against impoverished non-Indian districts are not likely to develop programs that will give adequate basic support to Indian districts.

Most of the State arguments for basic support need are at least anachronistic. Testimony before Senate Interior Subcommittee from the States of South Dakota and Arizona (December, 1974) centered around need resulting from tax exempt land, but carefully avoided any mention of PL 874. School administrators interviewed over the past several years have been almost unanimous in their praise of PL 874 as representing consistent and predictable funding. The districts in which it doesn't produce more income per pupil than local funds per pupil either within the district or on a State average are extremely rare. Macy and Santee were the only basic support districts where we found this to be true. Since those districts operate on 79% and 78% funding respectively, they are for financial purposes, Federal schools and will be considered in a separate recommendation with Pine Point, Minnesota.

As mentioned earlier, it is also difficult to see how a district can claim basic support need until it has used the maximum formula for PL 874. Most small districts couldn't begin to do this without adequate technical assistance. This will be discussed in the recommendations.

Systems of Supplanting

There is no Webster definition of supplanting that is appropriate to the school finance context. There is also no uniform school finance definition. When the word is used here it means: funds which were intended to increase the total available money to a school or school district were in fact used not to add to the total, but to replace other funds.

An unknown Indian participant at an Arizona Johnson O'Malley conference in March of 1974 posed the following question: "If a school district is almost completely Indian, what difference does it make and whose business is it if they spend money for basic support instead of special programs?" Apart from problems this creates with the distribution system that will be discussed in a separate section, the answer has to be that there is no problem with that as long as the money is additional money and is not simply supplanting.

Uncovered systems or devices for supplanting will be listed here in no particular order, either of subtlety or frequency. (Note: basic support districts have not cornered the market.) (1) Formula replacement of State money that is available to non-Indians, e.g. the Arizona equalization formula in effect until 1971 which paid equalization on a per-capita basis only for non-Indians within major impact districts. What would have been the Indian share was paid out of JOM. (2) In a district where there are Indian and non-Indian schools, using operational money to pay expenses at the non-Indian schools and billing JOM for the same expenses at the Indian schools. (3) Using Johnson O'Malley funds to run programs, supposedly supplementary, but actually required by State minimum standards. (4) Running genuinely supplementary programs with Indians and non-Indians and paying a pro-rated non-Indian portion out of ESEA, Title I when all or most of the Indians involved are also eligible for Title I. (5) Not counting JOM or PL 874 as district cost levels to be funded by a State plan when both are in fact used as part of the basic costs. (6) Using district funds to increase per pupil levels at non-Indian schools because of special circumstances, e.g. small enrollment, isolation, etc., but using JOM funds to accomplish the same purpose at Indian schools. (7) Operating a kindergarten program (even if 100% Indian) in a State where kindergartens are above minimum standards and paying all expenses out of JOM while collecting PL 874 funds for the same students without using any of them for those students.

This list is probably not definitive, but it represents forms of supplanting discovered through this study and previous studies by Indian Education Training, Inc.

Federal Responsibility and BIA Responsibility for Indian Education in Public Schools

Public systems of education have all been established by State Constitutions or legislation and not by Federal law. All public schools in the United States operate under State and not Federal authority.

All States except Mississippi and South Carolina have compulsory attendance laws. All States provide free public education for all persons between certain ages (usually four or five and twenty). No State law or Constitution says, "except for Indians."[1]

These statements are all obvious, and, yet, in many States and communities, providing public education for Indian students is seen as not only dependent on Federal funding, but depending on a floating and flexible definition of adequate Federal funding.

In April, 1972, the Deputy Superintendent of Schools announced through the Arizona Republic, Wednesday, April 19, 1972 that unless the Bureau produced another $1.1 million in basic support (in addition to their allocated $3.5 million in basic support) 15 Indian districts could be forced to close down. Again in March, 1975 at a Johnson O'Malley conference in Phoenix, a group of conferees composed primarily of Indian district superintendents, taxpayers (a euphemism for utility and mining company representatives), and county and State school representatives, a resolution was introduced and passed that would close all reservation schools in Arizona unless the BIA came through with the proper amount of basic support funding.

Both these incidents could be laid to rattling the collection plate, but they are significant. There is no record of any State or school district hitting up the Department of Defense because they aren't satisfied with the PL 874 payment levels from military bases. No outsider threatens to close down school districts because they have a low assessed valuation. Attempts to close school districts or schools to avoid integrating black students have all been declared illegal. In any case, no one claims openly not to want Indian enrollment--as long as they bring the right amount of their own Federal money.

For totally different reasons, this school economic discrimination within States or districts is sometimes supported by tribal councils or Indian communities. They are accustomed to dealing with the Bureau of Indian Affairs and other Federal organizations. Dealing with a legal structure that is solely within State jurisdiction feels neither familiar nor necessarily desirable.

The Bureau of Indian Affairs has no role whatsoever within the structure of State education systems unless the State agrees to give them a role. If the Bureau disapproves of the State's rejection of them, there has been nothing they could do except threaten to withhold all Johnson O'Malley money. That clearly would be an idle threat since the Indian community would hold the Bureau responsible for withholding services. Most States have a built-in public relations edge over the Bureau. Indian communities expect almost nothing of them.

Insofar as the Bureau of Indian Affairs and Indian communities accept the idea that maybe they're not altogether entitled to free public education under their State laws and Constitutions, the demand for BIA plugging of financial gaps, whether real or imagined, will continue.

Remedies

This section includes recommendations for legislative and administrative remedies of the problems treated earlier in this chapter. Recommendations for distribution of Johnson O'Malley funds are taken up in the next section of this chapter. There are additional recommendations in Chapter X of this report. (It is urged that the Bureau of Indian Affairs read and consider all recommendations in this report before the final draft of presently proposed JOM regulations.)

I. Legislative Recommendations.

(a) Legislative authority and appropriations for Indian community schools. There are presently six public school districts in which the majority of the revenue is Federal. Pine Point, Minnesota 84%; Macy, Nebraska 79%; Santee, Nebraska 78%; Winnebago, Nebraska 59%; Smee, South Dakota 72%; Todd County, South Dakota 64%.

It is recommended that the Bureau and HEW consult with tribal representatives and Indian community representatives and educators from these areas to discuss legislation that would make possible the creation of an alternative structure for Federally sponsored community schools.

This should also include legal help with experience in this area, skilled school finance people, and representative and technical assistance organizations such as the Coalition of Indian Controlled School Boards.

(b) It is recommended that a conference both for the purpose of discussing issues and developing possible legislation be held with all tribal and education representatives of reservation public school districts that have an Indian enrollment of over 70%. This should be sponsored jointly by the BIA and HEW and should include the technical assistance people and interest groups mentioned above.

(c) That part of PL 93-638, Title II, Part A that calls for the pro-rating of funds when Indians and non-Indians are served should be eliminated. There is no such thing as non-Indian funds. Any integrated program should be funded with integrated funds.

II. Administrative Recommendations.

(a) The Bureau should familiarize itself with, defend and enforce its own regulations. In those instances when the Bureau waives regulations, they should so so openly and give reasons why. Regulation requirements should be waived only on an individual basis.

The pre-1974 regulations usually were treated with an authority customarily reserved for the tablets of Mt. Sinai. The new regulations are either impossible to recollect or dismissed as the work of outsiders--possibly foreigners.

The Bureau should pay particular attention to those sections of the regulations that say the money does not have to be spent within a public or private school. The JOM Act of 1934 never used the words "public school." It said, "contract for the education of Indians."

(b) The BIA should immediately institute a personnel system that would place at least three full-time professional JOM staff people in Area offices. There should also be support staff. The actual number would be based on relative activity within that Area.

In Window Rock, Arizona the BIA now handles 15 separate contracts, one for each school district. That situation was the fundamental rationale for passing JOM legislation in the first place.

Decisions as to where Johnson O'Malley funds can most beneficially be spent should be left to the Indian community through their contracting group. Present regulations specifically allow this.

(c) The BIA should undertake a thorough and long-range training program for all BIA employees. It's interesting that U.S. postal employees are required to take tests to qualify as letter carriers, but BIA employees who handle millions of dollars in JOM funds are not required to have either previous or working knowledge of issues involved in their jobs. This is not to say that some are not wholly without relevant information or skills; it is to say that the BIA needs a formal training system both for dealing with public school districts and State Departments of Education and for helping to plan programs outside of public school systems.

The training course should include: Federal school law and regulations (with particular emphasis on JOM and PL 874); State school laws by Area; school finance, taught by experts; curriculum development; history of education, particularly Indian education in their Area.

(d) One pre-determined result of this training will have to be an alteration of the review system. Public schools operate on a year-to year schedule. They have no choice. They are dependent on State legislation and appropriations (usually not ready until late Spring) and teacher contracts (also late Spring).

The BIA operates on a Federal two year cycle. They don't match. It is not possible either to plan programs supplementary to a main budget or to fill gaps in a main budget before the main budget exists. Home builders understand this principle. One rarely sees second floors of homes in place before the first floor has been built.

(e) It's difficult to see why the Director of Public School Relations and the Johnson O'Malley Director are set up under the authority of an Albuquerque office that deals only with BIA school issues. It is recommended that this office be placed immediately under the Director of Education Programs.

(f) The Bureau should test to see that school budgets, documents, proposals, programs presented to them are the same as those presented to the school boards, the auditors, and the State Department of Education.

Three years ago the Phoenix Area office defended the funding of school districts not on the basis of their actual budgets, but on the basis of "hidden costs." Since the costs were also "hidden" from the Bureau, their budget support constituted a leap of faith that would draw hosannas from theologians, but serious head scratchings from the accounting brethren.

(g) Having been trained and educated themselves, the BIA JOM people should in turn train tribes, communities, and in some instances (PL 874) school administrators. They should be able to provide technical assistance on an ongoing basis that will enable Indian groups both to deal more successfully with public school systems; and, when that cannot be done, to assist in planning education programs outside of the school system.

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED	COLUMN E (% OF C) VARIABLE	COLUMN F FUNDING LEVEL (DxE) FIXED	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,400.	15.%	599,718.	120,000.	479,718.	500.%
ALASKA	1,685.	1,685.	14,879.	15.%	3,709,193.	5,684,000.	-1,974,807.	65.%
MINNESOTA	1,185.	1,185.	3,467.	15.%	607,824.	890,000.	-282,176.	68.%
MICHIGAN	1,146.	1,183.	711.	15.%	124,440.	111,000.	13,440.	112.%
OREGON	1,123.	1,183.	1,025.	15.%	179,397.	70,000.	109,397.	256.%
WYOMING	1,097.	1,183.	998.	15.%	174,671.	135,000.	39,671.	129.%
WISCONSIN	1,069.	1,183.	3,823.	15.%	669,106.	504,000.	165,106.	133.%
WASHINGTON	1,057.	1,183.	5,983.	15.%	1,047,151.	975,000.	72,151.	107.%
CALIFORNIA	1,006.	1,183.	1,940.	15.%	339,541.	350,000.	-10,459.	97.%
IOWA	1,000.	1,183.	231.	15.%	40,430.	0.	40,430.	-
MONTANA	965.	1,183.	6,869.	15.%	1,202,220.	1,060,000.	142,220.	113.%
NEBRASKA	950.	1,183.	865.	15.%	151,393.	344,000.	-192,607.	44.%
COLORADO	947.	1,183.	897.	15.%	156,994.	292,000.	-135,006.	54.%
NEVADA	943.	1,183.	2,710.	15.%	474,308.	230,000.	244,308.	206.%
KANSAS	942.	1,183.	220.	15.%	38,505.	102,000.	-63,495.	38.%
FLORIDA	877.	1,183.	245.	15.%	42,880.	10,000.	32,880.	429.%
ARIZONA (NAVAJO)	867.	1,183.	13,016.	15.%	2,278,075.	1,813,358.	464,717.	126.%
SOUTH DAKOTA	826.	1,183.	4,783.	15.%	837,126.	743,000.	94,126.	113.%
NEW MEXICO (AEQ)	823.	1,183.	6,451.	15.%	1,129,061.	1,647,000.	-517,939.	69.%
NORTH DAKOTA	817.	1,183.	2,143.	15.%	375,070.	740,000.	-364,930.	51.%
UTAH (NAVAJO)	772.	1,183.	1,243.	15.%	217,551.	252,545.	-34,994.	86.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,057.	15.%	710,061.	543,000.	167,061.	131.%
IDAHO	720.	1,183.	1,648.	15.%	288,435.	485,000.	-196,565.	59.%
MISSISSIPPI	595.	1,183.	100.	15.%	17,502.	15,000.	2,502.	117.%
ARIZ (PHOENIX)	867.	1,183.	6,024.	15.%	1,054,327.	608,342.	445,985.	173.%
ARIZ (PERIPH.) NAVAJO	867.	1,183.	799.	15.%	139,842.	0.	139,842.	-
NEW MEXICO (NAVAJO)	823.	1,183.	16,299.	15.%	2,852,669.	2,200,000.	652,669.	130.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	283.	15.%	49,531.	0.	49,531.	-
UTAH PHOENIX	772.	1,183.	520.	15.%	91,011.	20,000.	71,011.	455.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	185.	15.%	32,379.	0.	32,379.	-
OKLAHOMA (MUSKOGEE)	730.	1,183.	10,522.	15.%	1,841,573.	1,587,000.	254,573.	116.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	510.	15.%	89,261.	30,000.	59,261.	298.%
TOTALS					21,561,245.	21,561,245.	0.	100.%

*WHICHEVER IS HIGHER

Table 4. Application of distribution formula assuming the present amount of JOM supplementary funding and the present JOM population served.

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BEST COPY AVAILABLE

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED**	COLUMN E (% OF C) VARIABLE	COLUMN F FUNDING LEVEL (DxE) FIXED	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,928.	12.%	599,721.	120,000.	479,721.	500.%
ALASKA	1,685.	1,685.	18,152.	12.%	3,709,146.	5,684,000.	-1,974,854.	65.%
MINNESOTA	1,135.	1,185.	4,230.	12.%	607,867.	890,000.	-282,133.	68.%
MICHIGAN	1,146.	1,183.	867.	12.%	124,381.	111,000.	13,381.	112.%
OREGON	1,123.	1,183.	1,251.	12.%	179,470.	70,000.	109,470.	256.%
WYOMING	1,097.	1,183.	1,218.	12.%	174,736.	135,000.	39,[illegible]36.	129.%
WISCONSIN	1,089.	1,183.	4,664.	12.%	669,103.	504,000.	165,103.	133.%
WASHINGTON	1,057.	1,183.	7,299.	12.%	1,047,123.	975,000.	72,123.	107.%
CALIFORNIA	1,006.	1,183.	2,367.	12.%	339,572.	350,000.	-10,428.	97.%
IOWA	1,000.	1,183.	282.	12.%	40,456.	0.	40,456.	-
MONTANA	965.	1,183.	8,380.	12.%	1,202,205.	1,060,000.	142,205.	113.%
NEBRASKA	950.	1,183.	1,055.	12.%	151,351.	344,000.	-192.649.	44.%
COLORADO	947.	1,183.	1,094.	12.%	156,947.	292,000.	-135,053.	54.%
NEVADA	943.	1,183.	3,206.	12.%	474,283.	230,000.	244,283.	206.%
KANSAS	942.	1,183.	268.	12.%	38,448.	102,000.	-63,552.	38.%
FLORIDA	877.	1,183.	299.	12.%	42,895.	10,000.	32,895.	429.%
ARIZONA (NAVAJO)	867.	1,183.	15,880.	12.%	2,278,163.	1,813,358.	464,805.	126.%
SOUTH DAKOTA	826.	1,183.	5,835.	12.%	837,096.	743,000.	94,096.	113.%
NEW MEXICO (ABQ)	823.	1,183.	7,870.	12.%	1,129,040.	1,647,000.	-517,960.	69.%
NORTH DAKOTA	817.	1,183.	2,614.	12.%	375,008.	740,000.	-364,992.	51.%
UTAH (NAVAJO)	772.	1,183.	1,516.	12.%	217,487.	252,545.	-35,058.	66.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,950.	12.%	710,133.	543,000.	167,133.	131.%
IDAHO	720.	1,183.	2,011.	12.%	288,500.	485,000.	-196,500.	59.%
MISSISSIPPI	595.	1,183.	122.	12.%	17,503.	15,000.	2,503.	117.%
ARIZ (PHOENIX)	867.	1,183.	7,349.	12.%	1,054,296.	608,342.	445,954.	173.%
ARIZ (PERIPH.) NAVAJO	867.	1,103.	975.	12.%	139,875.	0.	139,875.	-
NEW MEXICO (NAVAJO)	823.	1,183.	19,885.	12.%	2,852,725.	2,200,000.	652,725.	130.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	345.	12.%	49,494.	0.	49,494.	-
UTAH PHOENIX	772.	1,183.	634.	12.%	90,955.	20,000.	70,955.	455.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	226.	12.%	32,422.	0.	32,422.	-
OKLAHOMA (MUSKOGEE)	730.	1,133.	12,837.	12.%	1,841,611.	1,587,000.	254,611.	116.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	622.	12.%	89,233.	30,000.	59,233.	297.%
TOTALS					21,561,245.	21,561,245.	0.	100.%

*WHICHEVER IS HIGHER

**PROJECTED PRESENT JOM POPULATION INCLUDING THOSE ELIGIBLE BUT NOT BEING SERVED (221)

Table 5. Application of distribution formula assuming the present amount of JOM supplementary funding and 2.33% increase in the JOM population

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED	COLUMN E (% OF C) VARIABLE	COLUMN F FUNDING LEVEL (DxE) FIXED	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
YORK	1,689.	1,689.	2,400.	19.%	788,600.	120,000.	668,600.	657.%
SKA	1,685.	1,685.	14,879.	19.%	4,877,410.	5,684,000.	-806,590.	86.%
NESOTA	1,185.	1,185.	3,467.	19.%	799,260.	890,000.	-90,740.	90.%
HIGAN	1,146.	1,183.	711.	19.%	163,632.	111,000.	52,632.	147.%
GON	1,123.	1,183.	1,025.	19.%	235,898.	70,000.	165,898.	337.%
MING	1,097.	1,183.	998.	19.%	229,684.	135,000.	94,684.	170.%
CONSIN	1,089.	1,183.	3,823.	19.%	879,842.	504,000.	375,842.	175.%
HINGTON	1,057.	1,193.	5,983.	19.%	1,376,954.	975,000.	401,954.	141.%
IFORNIA	1,006.	1,183.	1,940.	19.%	446,480.	350,000.	96,480.	128.%
A	1,000.	1,183.	231.	19.%	53,163.	0.	53,163.	-
TANA	965.	1,183.	6,869.	19.%	1,580,862.	1,060,000.	520,862.	149.%
RASKA	950.	1,183.	865.	19.%	199,075.	344,000.	-144,925.	58.%
ORADO	947.	1,183.	897.	19.%	206,440.	292,000.	-85,560.	71.%
ADA	943.	1,183.	2,710.	19.%	623,692.	230,000.	393,692.	271.%
SAS	942.	1,183.	220.	19.%	50,632.	102,000.	-51,368.	50.%
RIDA	877.	1,183.	245.	19.%	56,386.	10,000.	46,386.	564.%
ZONA (NAVAJO)	867.	1,183.	13,016.	19.%	2,995,559.	1,813,358.	1,182,201.	165.%
TH DAKOTA	826.	1,183.	4,783.	19.%	1,100,780.	743,000.	357,780.	148.%
MEXICO (ABQ)	823.	1,183.	6,451.	19.%	1,484,661.	1,647,000.	-162,339.	90.%
TH DAKOTA	817.	1,183.	2,143.	19.%	493,199.	740,000.	-246,801.	67.%
H (NAVAJO)	772.	1,183.	1,243.	19.%	286,069.	252,545.	33,524.	113.%
AHOMA (ANADARKO)	730.	1,183.	4,057.	19.%	933,696.	543,000.	390,696.	172.%
HO	720.	1,183.	1,648.	19.%	379,278.	485,000.	-105,722.	78.%
SISSIPPI	595.	1,183.	100.	19.%	23,014.	15,000.	8,014.	153.%
Z (PHOENIX)	867.	1,183.	6,024.	19.%	1,386,390.	608,342.	778,048.	228.%
Z (PERIPH.) NAVAJO	867.	1,183.	799.	19.%	183,885.	0.	183,885.	-
MEXICO (NAVAJO)	823.	1,183.	16,299.	19.%	3,751,123.	2,200,000.	1,551,123.	171.%
. (PERIPH.) NAVAJO	823.	1,183.	283.	19.%	65,131.	0.	65,131.	-
H PHOENIX	772.	1,183.	520.	19.%	119,675.	20,000.	99,675.	598.%
H (PERIPH.) NAVAJO	772.	1,183.	185.	19.%	42,577.	0.	42,577.	-
AHOMA (MUSKOGEE)	730.	1,183.	10,522.	19.%	2,421,579.	1,587,000.	834,579.	153.%
IFORNIA (PHOENIX)	1,006.	1,183.	510.	19.%	117,374.	30,000.	87,374.	391.%
TOTALS					28,352,000.	21,561,245.	6,790,755.	131.%

ICHEVER IS HIGHER

Table 6. Application of distribution formula assuming the present total JOM allocation and the present JOM population served.

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED**	COLUMN E (% OF C) VARIABLE	COLUMN F FUNDING LEVEL (DxE) FIXED	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,928.	16.%	788,605.	120,000.	668,605.	657.%
ALASKA	1,685.	1,685.	18,152.	16.%	4,877,349.	5,684,000.	-806,651.	86.%
MINNESOTA	1,185.	1,185.	4,230.	16.%	799,316.	890,000.	-90,684.	90.%
MICHIGAN	1,146.	1,183.	867.	16.%	163,555.	111,000.	52,555.	147.%
OREGON	1,125.	1,183.	1,251.	16.%	235,994.	70,000.	165,994.	337.%
WYOMING	1,097.	1,183.	1,218.	16.%	229,769.	135,000.	94,769.	170.%
WISCONSIN	1,089.	1,183.	4,664.	16.%	879,838.	504,000.	375,838.	175.%
WASHINGTON	1,057.	1,183.	7,299.	16.%	1,376,916.	975,000.	401,916.	141.%
CALIFORNIA	1,006.	1,183.	2,367.	16.%	446,521.	350,000.	96,521.	128.%
IOWA	1,000.	1,183.	282.	16.%	53,198.	0.	53,198.	-
MONTANA	965.	1,183.	8,380.	16.%	1,580,841.	1,060,000.	520,841.	149.%
NEBRASKA	950.	1,183.	1,055.	16.%	199,020.	344,000.	-144,980.	58.%
COLORADO	947.	1,183.	1,094.	16.%	206,377.	292,000.	-85,623.	71.%
NEVADA	943.	1,183.	3,306.	16.%	623,659.	230,000.	393,659.	271.%
KANSAS	942.	1,183.	268.	16.%	50,557.	102,000.	-51,443.	50.%
FLORIDA	877.	1,183.	299.	16.%	56,405.	10,000.	46,405.	564.%
ARIZONA (NAVAJO)	867.	1,183.	15,880.	16.%	2,995,675.	1,813,358.	1,182,317.	165.%
SOUTH DAKOTA	826.	1,183.	5,835.	16.%	1,100,741.	743,000.	357,741.	148.%
NEW MEXICO (ABQ)	823.	1,183.	7,870.	16.%	1,484,633.	1,647,000.	-162,367.	90.%
NORTH DAKOTA	817.	1,183.	2,614.	16.%	493,117.	740,000.	-246,883.	67.%
UTAH (NAVAJO)	772.	1,183.	1,516.	16.%	285,985.	252,545.	33,440.	113.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,950.	16.%	933,791.	543,000.	390,791.	172.%
IDAHO	720.	1,183.	2,011.	16.%	379,364.	485,000.	-105,636.	78.%
MISSISSIPPI	595.	1,183.	122.	16.%	23,015.	15,000.	8,015.	153.%
ARIZ (PHOENIX)	867.	1,183.	7,349.	16.%	1,386,349.	608,342.	778,007.	228.%
ARIZ (PERIPH.) NAVAJO	867.	1,183.	975.	16.%	183,928.	0.	183,928.	-
NEW MEXICO (NAVAJO)	823.	1,183.	19,885.	16.%	3,751,197.	2,200,000.	1,551,197.	171.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	345.	16.%	65,083.	0.	65,083.	-
UTAH PHOENIX	772.	1,183.	634.	16.%	119,601.	20,000.	99,601.	598.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	226.	16.%	42,634.	0.	42,634.	-
OKLAHOMA (MUSKOGEE)	730.	1,183.	12,837.	16.%	2,421,630.	1,587,000.	834,630.	153.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	622.	16.%	117,337.	30,000.	87,337.	391.%
TOTALS					28,352,000.	21,561,245.	6,790,755.	131.%

*WHICHEVER IS HIGHER
**PROJECTED PRESENT JOM POPULATION INCLUDING THOSE ELEGIBLE BUT NOT BEING SERVED (22%)

Table 7. Application of distribution formula assuming the present total JOM allocation and a 22% increase in the JOM population served.

COLUMN A	COLUMN B	COLUMN C	COLUMN D	COLUMN E	COLUMN F	COLUMN G	COLUMN H	COLUMN I
STATE	PER CAPITA EXPENDITURE	STATE OR NATIONAL AVERAGE*	NO. OF JOM STUDENTS SERVED	(% OF C) FIXED	FUNDING LEVEL (DxE) VARIABLE	FY 74 SUPPLEMENTAL ALLOCATION	$ CHANGE (F-G)	% CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,400.	25.%	1,013,400.	120,000.	893,400.	845.%
ALASKA	1,685.	1,685.	14,879.	25.%	6,267,779.	5,684,000.	583,779.	110.%
MINNESOTA	1,185.	1,185.	3,467.	25.%	1,027,099.	890,000.	137,099.	115.%
MICHIGAN	1,146.	1,183.	711.	25.%	210,278.	111,000.	99,278.	189.%
OREGON	1,123.	1,183.	1,025.	25.%	303,144.	70,000.	233,144.	433.%
WYOMING	1,097.	1,183.	998.	25.%	295,159.	135,000.	160,159.	219.%
WISCONSIN	1,089.	1,183.	3,823.	25.%	1,130,652.	504,000.	626,652.	224.%
WASHINGTON	1,057.	1,183.	5,983.	25.%	1,769,472.	975,000.	794,472.	182.%
CALIFORNIA	1,006.	1,183.	1,940.	25.%	573,755.	350,000.	223,755.	164.%
IOWA	1,000.	1,183.	231.	25.%	68,318.	0.	68,318.	-
MONTANA	965.	1,183.	6,869.	25.%	2,031,507.	1,060,000.	971,507.	192.%
NEBRASKA	950.	1,183.	865.	25.%	255,824.	344,000.	-88,176.	74.%
COLORADO	947.	1,183.	897.	25.%	265,288.	292,000.	-26,712.	91.%
NEVADA	943.	1,183.	2,710.	25.%	801,483.	230,000.	571,483.	349.%
KANSAS	942.	1,183.	220.	25.%	65,065.	102,000.	-36,935.	64.%
FLORIDA	877.	1,183.	245.	25.%	72,459.	10,000.	62,459.	725.%
ARIZONA (NAVAJO)	867.	1,183.	13,016.	25.%	3,849,482.	1,813,358.	2,036,124.	212.%
SOUTH DAKOTA	826.	1,183.	4,783.	25.%	1,414,572.	743,000.	671,572.	190.%
NEW MEXICO (ABQ)	823.	1,183.	6,451.	25.%	1,907,883.	1,647,000.	260,883.	116.%
NORTH DAKOTA	817.	1,183.	2,143.	25.%	633,792.	740,000.	-106,208.	86.%
UTAH (NAVAJO)	772.	1,183.	1,243.	25.%	367,617.	252,545.	115,072.	146.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,057.	25.%	1,199,858.	543,000.	656,858.	221.%
IDAHO	720.	1,183.	1,648.	25.%	487,396.	485,000.	2,396.	101.%
MISSISSIPPI	595.	1,183.	100.	25.%	29,575.	15,000.	14,575.	197.%
ARIZ (PHOENIX)	867.	1,183.	6,024.	25.%	1,781,598.	608,342.	1,173,256.	293.%
ARIZ (PERIPH.) NAVAJO	867.	1,183.	799.	25.%	236,304.	0.	236,304.	-
NEW MEXICO (NAVAJO)	823.	1,183.	16,299.	25.%	4,820,429.	2,200,000.	2,620,429.	219.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	283.	25.%	83,697.	0.	83,697.	-
UTAH PHOENIX	772.	1,183.	520.	25.%	153,790.	20,000.	133,790.	769.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	185.	25.%	54,714.	0.	54,714.	
OKLAHOMA (MUSKOGEE)	730.	1,183.	10,522.	25.%	3,111,882.	1,587,000.	1,524,882.	196.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	510.	25.%	150,833.	30,000.	120,833.	503.%
TOTALS					36,434,104.	21,561,245.	14,872,859.	169.%

*WHICHEVER IS HIGHER

Table 8. Application of distribution formula assuming a JOM funding level at 25% of total educational costs, and the present JOM population served.

BEST COPY AVAILABLE

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED**	COLUMN E (% OF C) FIXED	COLUMN F FUNDING LEVEL (DxE) VARIABLE	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,928.	25.%	1,236,348.	120,000.	1,116,348.	1030.%
ALASKA	1,685.	1,685.	18,152.	25.%	7,646,530.	5,684,000.	1,962,530.	135.%
MINNESOTA	1,185.	1,185.	4,230.	25.%	1,253,138.	890,000.	363,138.	141.%
MICHIGAN	1,146.	1,183.	867.	25.%	256,415.	111,000.	145,415.	231.%
OREGON	1,123.	1,183.	1,251.	25.%	369,983.	70,000.	299,983.	529.%
WYOMING	1,097.	1,183.	1,218.	25.%	360,224.	135,000.	225,224.	267.%
WISCONSIN	1,089.	1,183.	4,664.	25.%	1,379,378.	504,000.	875,378.	274.%
WASHINGTON	1,057.	1,183.	7,299.	25.%	2,158,679.	975,000.	1,183,679.	221.%
CALIFORNIA	1,006.	1,183.	2,367.	25.%	700,040.	350,000.	350,040.	200.%
IOWA	1,000.	1,183.	282.	25.%	83,402.	0.	83,402.	-
MONTANA	965.	1,183.	8,380.	25.%	2,478,385.	1,060,000.	1,418,385.	234.%
NEBRASKA	950.	1,183.	1,055.	25.%	312,016.	344,000.	-31,984.	91.%
COLORADO	947.	1,183.	1,094.	25.%	323,551.	292,000.	31,551.	111.%
NEVADA	943.	1,183.	3,306.	25.%	977,750.	230,000.	747,750.	425.%
KANSAS	942.	1,183.	268.	25.%	79,261.	102,000.	-22,739.	78.%
FLORIDA	877.	1,183.	299.	25.%	88,429.	10,000.	78,429.	884.%
ARIZONA (NAVAJO)	867.	1,183.	15,880.	25.%	4,696,510.	1,813,358.	2,883,152.	259.%
SOUTH DAKOTA	826.	1,183.	5,835.	25.%	1,725,701.	743,000.	982,701.	232.%
NEW MEXICO (ABQ)	823.	1,183.	7,870.	25.%	2,327,553.	1,647,000.	680,553.	141.%
NORTH DAKOTA	817.	1,183.	2,614.	25.%	773,091.	740,000.	33,091.	105.%
UTAH (NAVAJO)	772.	1,183.	1,516.	25.%	448,357.	252,545.	195,812.	178.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,950.	25.%	1,463,963.	543,000.	920,963.	270.%
IDAHO	720.	1,183.	2,011.	25.%	594,753.	485,000.	109,753.	123.%
MISSISSIPPI	595.	1,183.	122.	25.%	36,082.	15,000.	21,082.	241.%
ARIZ (PHOENIX)	867.	1,183.	7,349.	25.%	2,173,467.	608,342.	1,565,125.	357.%
ARIZ (PERIPH.) NAVAJO	867.	1,183.	975.	25.%	288,356.	0.	288,356.	-
NEW MEXICO (NAVAJO)	823.	1,183.	19,885.	25.%	5,880,989.	2,200,000.	3,680,989.	267.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	345.	25.%	102,034.	0.	102,034.	-
UTAH PHOENIX	772.	1,183.	634.	25.%	187,506.	20,000.	167,506.	938.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	226.	25.%	66,840.	0.	66,840.	-
OKLAHOMA (MUSKOGEE)	730.	1,183.	12,837.	25.%	3,796,543.	1,587,000.	2,209,543.	239.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	622.	25.%	183,957.	30,000.	153,957.	613.%
TOTALS					44,449,231.	21,561,245.	22,887,986.	206.%

*WHICHEVER IS HIGHER

**PROJECTED PRESENT JOM POPULATION INCLUDING THOSE ELEGIBLE BUT NOT BEING SERVED (22%)

Table 9. Application of distribution formula assuming a JOM funding level at 25% of total educational costs and a 22% increase in the JOM population served.

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D NO. OF JOM STUDENTS SERVED	COLUMN E (% OF C) FIXED	COLUMN F FUNDING LEVEL (DxE) VARIABLE	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
NEW YORK	1,689.	1,689.	2,400.	50.%	2,026,800.	120,000.	1,906,800.	1689.%
ALASKA	1,685.	1,685.	14,879.	50.%	12,535,558.	5,684,000.	6,851,558.	221.%
MINNESOTA	1,185.	1,185.	3,467.	50.%	2,054,198.	890,000.	1,164,198.	231.%
MICHIGAN	1,146.	1,183.	711.	50.%	420,557.	111,000.	309,557.	379.%
OREGON	1,123.	1,183.	1,025.	50.%	606,288.	70,000.	536,288.	866.%
WYONING	1,097.	1,183.	998.	50.%	590,317.	135,000.	455,317.	437.%
WISCONSIN	1,089.	1,183.	3,823.	50.%	2,261,305.	504,000.	1,757,305.	449.%
WASHINGTON	1,057.	1,183.	5,983.	50.%	3,538,945.	975,000.	2,563,945.	363.%
CALIFORNIA	1,006.	1,183.	1,940.	50.%	1,147,510.	350,000.	797,510.	328.%
IOWA	1,000.	1,183.	231.	50.%	136,637.	0.	136,637.	-
MONTANA	965.	1,183.	6,869.	50.%	4,063,014.	1,060,000.	3,003,014.	383.%
NEBRASKA	950.	1,183.	865.	50.%	511,648.	344,000.	167,648.	149.%
COLORADO	947.	1,183.	897.	50.%	530,576.	292,000.	238,576.	182.%
NEVADA	943.	1,183.	2,710.	50.%	1,602,965.	230,000.	1,372,965.	697.%
KANSAS	942.	1,183.	220.	50.%	130,130.	102,000.	28,130.	128.%
FLORIDA	877.	1,183.	245.	50.%	144,918.	10,000.	134,918.	1449.%
ARIZONA (NAVAJO)	867.	1,183.	13,016.	50.%	7,698,964.	1,813,358.	5,885,006.	425.%
SOUTH DAKOTA	826.	1,183.	4,783.	50.%	2,829,145.	743,000.	2,086,145.	381.%
NEW MEXICO (ABQ)	823.	1,183.	6,451.	50.%	3,815,767.	1,647,000.	2,168,767.	232.%
NORTH DAKOTA	817.	1,183.	2,143.	50.%	1,267,585.	740,000.	527,585.	171.%
UTAH (NAVAJO)	772.	1,183.	1,243.	50.%	735,235.	252,545.	482,690.	291.%
OKLAHOMA (ANADARKO)	730.	1,183.	4,057.	50.%	2,399,716.	543,000.	1,856,716.	442.%
IDAHO	720.	1,183.	1,648.	50.%	974,792.	485,000.	489,792.	201.%
MISSISSIPPI	595.	1,183.	100.	50.%	59,150.	15,000.	44,150.	394.%
ARIZ (PHOENIX)	867.	1,183.	6,024.	50.%	3,563,196.	608,342.	2,954,854.	586.%
ARIZ (PERIPH.) NAVAJO	867.	1,183.	799.	50.%	472,609.	0.	472,609.	-
NEW MEXICO (NAVAJO)	823.	1,183.	16,299.	50.%	9,640,859.	2,200,000.	7,440,859.	438.%
N.M. (PERIPH.) NAVAJO	823.	1,183.	283.	50.%	167,395.	0.	167,395.	-
UTAH PHOENIX	772.	1,183.	520.	50.%	307,580.	20,000.	287,580.	1538.%
UTAH (PERIPH.) NAVAJO	772.	1,183.	185.	50.%	109,428.	0.	109,428.	-
OKLAHOMA (MUSKOGEE)	730.	1,183.	10,522.	50.%	6,223,763.	1,587,000.	4,636,763.	392.%
CALIFORNIA (PHOENIX)	1,006.	1,183.	510.	50.%	301,665.	30,000.	271,665.	1006.%
TOTALS					72,868,215.	21,561,245.	51,306,970.	338.%

*WHICHEVER IS HIGHER

Table 10. Application of distribution formula assuming a JOM funding at 50% of total educational costs, and the present JOM population served.

BEST COPY AVAILABLE

COLUMN A STATE	COLUMN B PER CAPITA EXPENDITURE	COLUMN C STATE OR NATIONAL AVERAGE*	COLUMN D. NO. OF JOM STUDENTS SERVED**	COLUMN E (% OF C) FIXED	COLUMN F FUNDING LEVEL (DxE) VARIABLE	COLUMN G FY 74 SUPPLEMENTAL ALLOCATION	COLUMN H $ CHANGE (F-G)	COLUMN I % CHANGE (F/Gx100)
EW YORK	1,689.	1,689.	2,928.	50.%	2,472,696.	120,000.	2,352,696.	2061.%
LASKA	1,685.	1,685.	18,152.	50.%	16,293,060.	5,684,000.	9,609,060.	269.%
INNESOTA	1,185.	1,185.	4,230.	50.%	2,506,275.	890,000.	1,616,275.	282.%
ICHIGAN	1,146.	1,183.	867.	50.%	512,831.	111,000.	401,831.	462.%
REGON	1,123.	1,183.	1,251.	50.%	739,967.	70,000.	669,967.	1057.%
YOMING	1,097.	1,183.	1,218.	50.%	720,447.	135,000.	585,447.	534.%
ISCONSIN	1,089.	1,183.	4,664.	50.%	2,758,756.	504,000.	2,254,756.	547.%
ASHINGTON	1,057.	1,183.	7,299.	50.%	4,317,359.	975,000.	3,342,359.	443.%
ALIFORNIA	1,006.	1,183.	2,367.	50.%	1,400,081.	350,000.	1,050,081.	400.%
OWA	1,000.	1,183.	282.	50.%	166,803.	0.	166,803.	-
ONTANA	965.	1,183.	8,380.	50.%	4,956,770.	1,060,000.	3,896,770.	468.%
EBRASKA	950.	1,183.	1,055.	50.%	624,033.	344,000.	280,033.	181.%
OLORADO	947.	1,183.	1,094.	50.%	647,101.	292,000.	355,101.	222.%
EVADA	943.	1,183.	3,306.	50.%	1,955,499.	230,000.	1,725,499.	850.%
ANSAS	942.	1,183.	268.	50.%	158,522.	102,000.	56,522.	155.%
LORIDA	877.	1,183.	299.	50.%	176,859.	10,000.	166,859.	1769.%
RIZONA (NAVAJO)	867.	1,183.	15,880.	50.%	9,393,020.	1,813,358.	7,579,662.	518.%
OUTH DAKOTA	826.	1,183.	5,835.	50.%	3,451,403.	743,000.	2,708,403.	465.%
EW MEXICO (ABQ)	823.	1,183.	7,870.	50.%	4,655,105.	1,647,000.	3,008,105.	283.%
OUTH DAKOTA	817.	1,183.	2,614.	50.%	9,556,581.	740,000.	8,816,581.	1291.%
TAH (NAVAJO)	772.	1,183.	1,516.	50.%	896,714.	252,545.	644,169.	355.%
KLAHOMA (ANADARKO)	730.	1,183.	4,950.	50.%	2,927,925.	543,000.	2,384,925.	539.%
DAHO	720.	1,183.	2,011.	50.%	1,189,507.	485,000.	704,507.	245.%
ISSISSIPPI	595.	1,183.	122.	50.%	72,163.	15,000.	57,163.	481.%
RIZ (PHOENIX)	867.	1,183.	7,349.	50.%	4,346,934.	608,342.	3,738,592.	715.%
RIZ (PERIPH.) NAVAJO	867.	1,183.	975.	50.%	576,713.	0.	576,713.	-
EW MEXICO (NAVAJO)	823.	1,183.	19,885.	50.%	11,761,978.	2,200,000.	9,561,978.	535.%
.M. (PERIPH.) NAVAJO	823.	1,183.	345.	50.%	204,068.	0.	204,068.	-
TAH PHOENIX	772.	1,183.	634.	50.%	375,011.	20,000.	355,011.	1875.%
TAH (PERIPH.) NAVAJO	772.	1,183.	226.	50.%	133,679.	0.	133,679.	-
KLAHOMA (MUSKOGEE)	730.	1,183.	12,837.	50.%	7,593,086.	1,587,000.	6,006,086.	479.%
ALIFORNIA (PHOENIX)	1,006.	1,183.	622.	50.%	367,913.	30,000.	337,913.	1226.%
TOTALS 295					96,908,859.	21,561,245.	75,347,614.	449.%

WHICHEVER IS HIGHER

*PROJECTED PRESENT JOM POPULATION INCLUDING THOSE ELEGIBLE BUT NOT BEING SERVED (22%)

Table 11. Application of distribution formula assuming a JOM funding level at 50% of total educational cost, and a 22% increase in the JOM population served.

VI. SUPPLEMENTARY FEDERAL PROGRAMS

REVENUES "FROM" INDIAN PUPILS

Inconsistencies In Allocation, And Other Topics

In this study of the allocation and use of Federal funds for supplementary programs for Indian education we had hypothesized that the percentage of Federal revenues coming into the identified school districts would be comparable to the percentage of Indian enrollment in those school districts that had a significant Indian enrollment. However, our findings did not prove this to be true. In thirty-nine percent of school districts surveyed, the Federal revenues as a per cent of total revenues were consistently higher than the Indian enrollment as a per cent of total enrollment.

For example,.in Flagstaff, Arizona, only three percent of their total enrollment for the 1973-74 school year was Johnson O'Malley Indian. Yet, 199, or 27% of eligible Title I students were Indian. They brought in $25,229.22. Fifty-five percent of the total eligible students were Indian. They brought in $36,411.32. Additionally, they received $114,605.00 for Title IV, Part A, and $301,245.00 from Johnson O'Malley for a total of $539,130.00 of Federal money.

These same Indian students were included in the Average Daily Attendance figures as regular students who brought in additional State and local revenues. The total amount of money brought in by these Indian students in Flagstaff was $639,442.10.

Peach Springs, which ranks first in local effort among the districts studied in Arizona had a total budget of $99,637.29 for fiscal year 1974. The total student population was 129. The total enrollment for Peach Springs is very near 50% of the total Johnson O'Malley enrollment in Flagstaff. Yet, statistics indicate that

Flagstaff received Federal monies exceeding what Peach Springs received by almost 600%. In comparing the Title IV, Part A allocations, Peach Springs received $89.00 per pupil with Flagstaff receiving $473.00 per eligible student. Indeed Title IV is entitlement money according to the number of eligible Indian students multiplied times the established per pupil cost rate within the state. Peach Springs and Flagstaff are in the same State.

Wherever the Indian enrollment nears 30-35% of the total enrollment figure, the school becomes 'Indian'. Schools in this category must rely upon the Federal Government for an estimated 50% of their budget. No such reliance is necessary in any other kind of school district, even those with a high percentage of low income families.

In South Dakota, three of the schools studied received 52-65% of their monies from the Federal Government. A share of these monies are used for specific programs, or supplementary programs. However, South Dakota receives JOM basic support which is 55.3% of the total JOM monies coming into the State. In Shannon County, South Dakota, the Indian Enrollment was 54% for the fiscal year 1974, yet they received 60% of their budget from the Federal Government. With three times as many Indian students as Wakpala, South Dakota, Shannon County received 10 times as much Title I, nearly 10 times as much Title IV, about the same Johnson O'Malley and 8 times as much PL 874.

One feature we see in the analysis of the statistical information is that the total amount of State, local and identified Federal revenues, which the school district received, generally did not change drastically over the three year period. The total revenue figures indicated that the most significant increase was in the Federal assistance rather than in State and local.

It is very clear that Title IV, Part A funds are very low, especially in comparison to Title I and Johnson O'Malley. In the States surveyed, JOM revenue was the highest, per pupil, in South Dakota. However, the South Dakota per pupil revenue includes the basic support funds also. In considering only the supplementary money, South Dakota's per pupil JOM revenue is very low.

JOM per pupil supplementary revenues, generally, are maintained quite consistently. However, this does not mean that the revenues are equated per pupil from district to district within each state, nor even from State to State.

Efforts to determine trends in the funding patterns, from school district to school district, for the supplemental programs proved one thing. There are no consistent trends. There are no standard relationships which can be documented in terms of funding.

There has been absolutely no evidence that these programs are duplicative. In the majority of the schools each supplementary program has very specific programming with Title I being the most consistent. Title I very clearly is a remedial program, especially for Math and Reading. Most JOM/Indian children are also qualified as Title I target students. It has been pointed out that because of the existence of Title I programming, the other supplementary programs by and large are devoted to special education needs of Indian children. This applies in all States and most school districts, with the exception of parental costs.

California and Johnson O'Malley

Although California was the first State to contract for JOM funds, by 1958 its JOM funds had been highhandedly withdrawn, and no more were received until 1970. In Fiscal Year 1970, $35,000.00 was granted by the Bureau of Indian Affairs to the State of California, under the Johnson O'Malley Program. The Prime Contractor was the California State Department of Public Instruction whose responsibility under the contract was to establish a State Department of Indian Education. In Fiscal Year 1971, the Contract for Johnson O'Malley in California was for approximately $130,000.00 for the special educational programs for close to 530 eligible Indian students. The Johnson O'Malley appropriation has steadily increased, although not drastically. In Fiscal Year 1974, California Indians received approximately $300,000.00. In Fiscal Year 1975, the Johnson O'Malley appropriation for the Sacramento Area Office increased to $350,000.00. Approximately 2,000 students benefitted from these programs.

With the expanded definition of Indian as contained in the PL 93-638, Title II proposed regulations, it is anticipated that many more California Indians will be eligible to receive Johnson O'Malley programming for their children. In consideration of the fact that the Johnson O'Malley program was expressly designed to meet the needs of Indians in California, it is ironic indeed that California Indians have had so much difficulty in obtaining the Johnson O'Malley funds.

California Indian people have expressed differing opinions. The most consistent opinion is that California Indians have never received their due share of Johnson O'Malley funds in consideration of the large enrollment of Indian children in California. There are certainly many Indian people in California who have a relationship to the land base that has been traditionally required by regulation for JOM programs. These people differ in their opinions as to whether the JOM program must be restricted to the relationship to a land base. However, in studying the intent of the original legislation it appears that what California now requires is not very different from the intent of the original Johnson O'Malley legislation to make it possible that the Department of the Interior should arrange for the handling of certain Indian problems with those States in which the Indian tribal life is largely broken up and which the Indians are to a considerable extent mixed with the general population.

If the proposed PL 638 Rules and Regulations retain the definition of Indian they now contain, then many more California Indian people will be eligible to receive Johnson O'Malley funds. Therefore Congress will have to consider the larger clientele in the Johnson O'Malley program and allocate a far larger amount for the national Johnson O'Malley program, within the provisions of the Snyder Act.

Alaska's Johnson O'Malley Program

The territory of Alaska first received a negotiated contract for Johnson O'Malley services in 1952. The contract was awarded on the basis of one school district containing five local schools with a total eligible Johnson O'Malley enrollment of approximately fifty-six children. The program has continued to grow rapidly over the years. In 1970 the Johnson O'Malley enrollment in Alaska was approximately 2,851 with the

JOM grant for the State approximating $3,505,000.00. In Fiscal Year 1975 there were approximately 14,880 eligible Johnson O'Malley students enrolled in eligible Johnson O'Malley schools, for an estimated budget of $5,684,000.00.

In Fiscal Year 1973, The Bureau of Indian Affairs entered into a contract with the Alaska Federation of Natives for the Administration of the Johnson O'Malley contract. In Fiscal Year 1974, 34 JOM programs were funded, and 40 in fiscal 1975 by the Alaska Federation of Natives with local school districts, non-profit regional corporations, local Native parent committees, local village corporations, and other local Native organizations serving the Alaska Native students.

The Alaska Federation of Natives has identified the following goals consistent with their operation of the Johnson O'Malley Program in the State of Alaska:

1) enhance the educational opportunities and achievements of the Alaska Native child who is the intended beneficiary of this program.

2) to provide a responsible fiscal accounting system that enables identification, reimbursements, and audit of expenditures of funds for services contracted;

3) provide program development and technical assistance to the sub-contractors (as identified above) in strengthening and/or implementing their programs; and

4) to provide evaluations and follow-up reports primarily for contract compliance of stated goals and objectives of the programs.

The Johnson O'Malley program operated by the Alaska Federation of Natives, Inc., is maintained at the direction of a newly established Johnson O'Malley Review Committee. This statewide committee is similar in make-up and responsibilities to the Title IV National Advisory Council on Indian Education. Both groups have the responsibility of reviewing program proposals submitted by proposed contractors. According to the Alaska Federation of Native's JOM office, all proposals are received and evaluated in terms of:

1) Need
2) Direct benefits to Native students at the elementary and secondary educational levels,
3) Outreach to the most Native students possible.

The first Johnson O'Malley educational plan is being developed during Fiscal Year 1975 for the State of Alaska by the Alaska Federation of Natives. The total document will include input from the twelve native regions in the State. It is anticipated that this comprehensive plan will be completely developed over a three year period, with drafts of the plan finished during each of those three years.

It appears that services are reaching the village people directly with the Alaska Federation of Natives Association assuming control of the administration of the contract.

In the analysis of recent Johnson O'Malley contracts let by the Alaska Federation of Natives, it appeared that Indian and Native students could be counted two and three times for programming assistance under the Johnson O'Malley programming. For instance, a given village parent committee could submit a proposal in cooperation with the local school for related school activities, the regional non-profit corporation's education arm could submit a proposal which would provide programming in several villages, such as bi-lingual programming with the village being discussed also benefitting from their regional program; and the Alaska Indian Legal Services would submit a proposal to AFN for the offering of a course in several villages, including the identified village, on the Alaska Native Claims Act --and all could be funded, with the same village students involved, Nevertheless, there is not any duplication of programming. Allprograms have specific goals and activities -- all of which meet the special educational needs of the Alaska Native students. We do question whether the distribution of John O'Malley contracts in this manner provides assurance that all eligible villages receive Johnson O'Malley programs, and technical assistance to help develop these programs.

There appears to be good coordination of the Johnson O'Malley efforts and Title IV, Part A efforts in many of the schools studied. The programs are not duplicative and complement each other very well. With the control of the JOM programming taken over by the AFN, the Alaskan Indian parent committees are receiving a great deal of technical assistance from the AFN staff. However, it is recommended that the AFN coordinate efforts with the Title IV, Part A office to insure that adequate training be developed for all parent committees for both Title IV and Johnson O'Malley programming.

COMMUNITY REACTIONS

In two case studies in each of five states we attempted to obtain perspectives and recommendations from the individuals most affected by the Federal assistance programs.

Parents were especially pleased to be interviewed. However, the general trend of our interviews with parents indicated a hesitance on their part to be critical of the Federal programs in any way. This is logical in view of how difficult it has been for many communities to obtain Federal assistance for educational programming. It has been noted, however, that when criticisms were expressed, issue was taken with individuals rather than with specific programming. Community people tended to react to individuals administering the programs, rather than what was happening in the programs.

Sixteen percent of the respondents maintained positions on more than one education committee and nine percent of the respondents sit on more than the Johnson-O'Malley committee, the Title IV committee and the Title I committee. In addition, two districts surveyed also maintain Title VII committees, .6% of the respondents sitting on all four committees. Although the percentages are not exceedingly high, they do provide a degree of authenticity to the hypothesis that many Indian parents who are active in an educational committee most usually are active in more than one.

Most answers to our survey questions can not illustrate the kind of effort Indian people are making to insure a more effective educational programming for their children. Neither are they indicative of the urgency and sincerity. of the recommendations they are making. It is impossible to make a sentence shout. How can you make the printed word sparkle with the dignity and hope of those parents who struggle so hard to make the educational opportunities of their children similar to those open to all other children in America? Why should the chairman of a given Indian reserva- when it is clear in the State Constitutions that education is a responsibility of the State toward all its people? Basically, it reflects the fact that the non-Indian community does not understand nor does not accept why Indians should get Johnson O'Malley and Title IV and other special (or privileged) categorical funds because the Indians do not pay taxes. Quite often non-Indian parents discuss, for their children's ears, the fact that Indian children do not deserve to go to school in their school. Self-righteous parents who have influenced their children into degrading the Indian children, can make school an unbearable place to be. The truth is that every Indian child, in many schools, brings in more money than any of the children of those taxpayers.

In the face of these kinds of obstacles, Indian parents made these suggestions:

a. More money is needed to adequately and fully fund programs.

b. Provide better and more training, not only for staff members but parent committees.

c. Determine a more equitable formula for distribution of funds.

d. Allow more local control, especially local Indian control.

e. Provide more information on the related Federal programs in addition to the general field of Indian Education.

f. Clearly determine the unique needs of each local reservation area.

g. Provide less manipulation and direction and more technical assistance from the Bureau of Indian Affairs.

h. Keep Johnson O'Malley supplementary. No basic support!

i. Do not permit schools to use Johnson O'Malley and Title IV for programs which the schools should support.

j. More cultural programs for Johnson O'Malley Indian Students.

k. Offer training in evaluation for parental committee.

l. More student in-put into program planning, implementation and evaluation.

m. Less BIA control of local programming.

n. Fund programs on "merit" basis.

o. Give consideration to urban Indians.

p. Give consideration to unique tribal needs.

In discussions held with the various parent groups in those States surveyed, there were several general recommendations and comments. There apparently is a great need for information on Title IV, all parts but especially Part A. The information needed includes a breakdown of all parts of the Title IV Act. This would include the rules and regulations for the programs, in layman's terms. There is a general lack of information on all Federal assistance programs available to Indian people. Most usually, the parent committees for each program understand that particular program only. These individuals want the knowledge, information and training but their most convenient source of assistance, the public school district, has not provided it.

Local parent and community committees generally are poorly trained, especially in light of the new responsibilities and powers being vested in the committees. We do not propose that the powers of the committees be curbed to any degree whatsoever, but only that the committees be provided necessary training. We noted that many committees are either poorly informed or misinformed, especially in procedures involving negotiations of contracts. Again, this related directly to the need for qualified, cooperative individuals to provide technical assistance and training.

An additional request from many local Indian Education Committees dealt with the need to obtain knowledge about the relationship of the various categorical program committees. Some committees had been informed by the State Department that it was illegal for one committee to function as the committee for each categorical program, especially those related to Indian educational assistance. This is especially difficult to deal with if the local educational agency has had some 'input' into the selection of the committee members.

Several parent committee groups were quite uncomfortable with the Title I program in their schools. Apparently, in schools which have a high enrollment of Indian children that is itself a low percentage of the total enrollment, there is some indication that those eligible Indian target students do not get their share of the program.

Issues

Several issues arose in discussions with informants during this study. Both Indian Education Committees and local school district administrators objected to aspects of proposed regulations for Title II of PL 638, especially, prorating of Johnson O'Malley funds for the participation of eligible Johnson O'Malley students only. The specific regulation reads: "Where students other than eligible Indian students participate in programs to be funded under a Johnson O'Malley contract, the money spent under the contract will be prorated to cover the cost of the participation of only the eligible Indian students." This provision was included in order to insure the Johnson O'Malley money be spent only on Indian students. Some school administrators believe that prorating of general funds is illegal. Since non-Indian participation, by proposed regulation, would be permitted only if that participation were considered de minimus, (roughly, "incidental") then the intent of the prorating requirement appears to benefit the Johnson O'Malley students by insuring that money is spent as intended, on Indian children.

Powers of the Indian Education Committees

PL 638, Title II, Section 403.16(a)(2) provides for Indian education committees to approve and disapprove all programs to be contracted under this part. All programs contracted pursuant to this part shall require the prior approval of the appropriate Indian Education Committee. "Section 403.16(a)(4) provides for such committees to recommend to the appropriate Bureau contracting officer cancellation of a contract(s) which contains the program(s) approved by the Indian Education Committee if the contractor fails to permit such committee to exercise its powers and duties as specified by this section."

Some local school district administrators have taken the position that these regulations usurp the power of their local school district Board of Education. Given the history of Johnson O'Malley programming, in order to insure that programming is operating according to the plan designed by the Indian Education Committee based on their prioritized needs, the authority conferred by the Act must be maintained by the committee.

We further recommend that training programs be instituted for Indian Education Committees, especially in regards to the Rules and Regulations outlining their powers and duties. This program must be a responsibility assumed by the Bureau of Indian Affairs.

There does not exist any legal justification for excluding from JOM funding Indian people who are not on or near a reservation area. However, if non-reservation Indian people will be eligible for

Johnson O'Malley programming, then the total Johnson O'Malley eligible membership will increase considerably. Therefore, the appropriation will have to increase considerably as well. We recommend that the question of eligibility be determined consistently for all of the Bureau of Indian Affairs services. We further recommend that the definition of Indian Tribe, for programming purposes, be consistent with the definition, contained in Title II, Section 403.2(j), of Public Law 93-638.

Program Administration and Management

Based upon on-site visits to the Bureau Offices, we determined that there exists no standardization of program policy nor of program management. Each Area Johnson O'Malley office has a great deal of power, arbitrarily exercised in the decision making process.

Standard questions asked of administrative personnel dealt with negotiation procedures, budgeting, administrative costs and reporting procedures; each will be discussed independently.

(1) Program and Budget Negotiation Procedures: The submission of program proposals based on the local educational needs appears to be the standard procedure of application for Johnson O'Malley programs. However, one Area differed a great deal from the others in the application process. This particular Area, through their prime contractor, decided how much money a school district would receive, at the prime contractor's level. This decision was based upon three factors: a) the prime contractor's determination of the educational need of each local school district; b) the numbers of eligible Indian children at the school district; c) the wealth of the school district.

Based upon consideration of these three factors, the prime contractor determined how much money each school district would receive with absolutely no input from the local school district, its parent committee nor even the statewide Johnson O'Malley advisory committee. Each local Indian Education Committee and the school administration were notified of the amount they were 'entitled' to. The school and committee in turn were asked to submit a proposal for this 'entitlement' based upon their prioritized educational needs. The program and the subsequent budget was then agreed upon between prime contractor and school district. There was no negotiation for the pre-determined amount of grant, however. Grant awards have been made on the basis of local grantsmanship, articulation skills, and "who you know." This is in direct violation of funding programs to meet the special educational needs of Indian children.

In two Area offices, it was even possible for local applicants who did not qualify for Johnson O'Malley program money to negotiate with the local Bureau of Indian Affairs for such money. These applicants were eligible based on blood quantum; however, the land base relationship did not exist. This example typifies the very general powers which exist at the Area level. It is apparent that Area Office JOM personnel maintain total responsibility for the Johnson O'Malley program. There are no accountability requirements of the Bureau Offices, and other than vague reports, there is no clear, concise, standardized reporting process. All Area staff members were questioned about their decision making process. All consistently replied that decisions were made according to their interpretation of the Johnson O'Malley Rules and Regulations. These interpretations certainly are not standardized.

Generally it can be stated that negotiation processes currently existing involve the local parent education groups and are handled as required by the Rules and Regulations. Inconsistencies do arise from the undirected decision making of the Area offices.

A major tribal group has observed that negotiation procedures, as presently practiced by the Bureau of Indian Affairs, are in fact clarification sessions on Rules and Regulations. Therefore, this group recommends that the negotiation procedures be redefined to reflect actual and real negotiations at the contractual level. This group further recommends that contracts and contract negotiations be processed at the Washington level thereby saving millions of dollars now spent at the area level.

(2) Administrative Cost: Two Area offices deducted administrative expenses from the allocation received at those particular Areas, until they were directed that this expenditure at the Area level was not allowable. Indeed it was surprising to the researchers that any sort of direction was provided as it was quite clear that all decisions were Area decisions with little if any Central office direction. (This statement is qualified to exclude the decision on how much money would come into the area office, yearly, for the total area Johnson O'Malley program.)

The issue of administrative costs for the contractors requires a great deal of clarification. Some State Departments of Education would close down if they were unable to take administrative support costs from the Johnson O'Malley contracts which they administer. Yet State Departments of Education generally do not make any significant contribution to the Johnson O'Malley administration.

Administrative costs have increased a great deal recently, especially with the advent of contracting with tribal groups and incorporated Indian parent groups. These increased costs decrease the amount of program money available for Indian students directly. However, there are start-up costs necessarily incurred for Indian tribal groups assuming the JOM administration for the first year. Indeed, we believe that direct services are reaching the local people, and program money is being spent for special programs to meet the unique educational needs of Indian children. Educational technical services have now been developed for the Indian parent committees in many areas. Indian self-determination can only be accomplished by allowing Indian people to operate and control programs for Indian people.

We have these reservations about administrative costs:

> All possible sources for administrative support must be determined and sought. Because administrative costs water down the amount of money directly available for programs, all attempts to find alternative sources of administrative support are strongly supported, as well as separate allocations for program costs and for administrative costs.
>
> If administrative costs are to be maintained, as is, we recommend that a maximum percentage factor be determined which shall be strongly enforced to insure that the maximum amounts possible reach the Johnson O'Malley children.
>
> We recommend that the issue concerning redefinition of administrative costs be considered in order to clarify program operations.

(3) Reporting Procedures: There does not exist a standard accountability process throughout the Bureau of Indian Affairs. Despite claims that reporting procedures are complied with, no clear accountability process appears evident. One reason for the lack of accountability is that the Bureau of Indian Affairs staff is completely inadequate Area to Area. Staffing is nowhere sufficient to adequately deal with all contracts and subcontracts. Unfortunately the Bureau of Indian Affairs staff has been forced to "accept" at face value all reports submitted by contractors, as they are in no position to document and sufficiently monitor the contracts. We recommend that accountability at the school district level be enforced by requiring school districts to maintain standardized, comprehensive and auditable records. Program, as well as line item accounting should aid in efficient program selection.

We noted that Rules and Regulations are vague in relation to the development of the comprehensive educational plan required of all contractors. If this regulation were strictly adhered to, many accountability problems would resolve themselves through planned operations.

JOM staff members consistently, Area to Area, discussed the lack of communication from the JOM desk in the Bureau's Central office. The arbitrary power which exists at the Area level is encouraged by this lack of direction from the Central office JOM staff.

	District	Assessed Value	ADA	Assessed Valuation Per ADA
1972				
	Graham	$ 566,663.00	167	$ 3,393.19
	Dahlonegah	146,535.00	105.8	1,384.50
	Briggs	759,224.00	316	2,402.61
	Smithville	1,197,283.00	412.5	2,902.29
	Carnegie	4,198,487.00	829	5,064.52
	Geronimo	1,361,929.00	305	4,465.34
	Ponca City	53,522,651.00	6,321	8,467.73
	Red Rock	2,284,675.00	168.3	13,577.44
1973				
	Graham	$ 586,165.00	200	2,930.83
	Dahlonegah	155,350.00	101.4	1,532.05
	Briggs	883,097.00	321	2,751.08
	Smithville	1,184,848.00	423.6	2,797.03
	Carnegie	4,084,825.00	808	5,055.48
	Geronimo	1,437,010.00	335	4,289.58
	Ponca City	54,862,144.00	6,237	8,796.24
	Red Rock	2,325,005.00	174	13,362.10
1974				
	Graham	$ 585,159.00	176	3,324.77
	Dahlonegah	166,398.00	105.8	1,573.50
	Briggs	913,481.00	302	3,024.77
	Smithville	1,211,312.00	438.1	2,764.67
	Carnegie	4,322,248.00	783	5,520.11
	Geronimo	1,523,572.00	319	4,776.09
	Ponca City	56,023,112.00	5,980	9,368.41
	Red Rock	2,381,923.00	152	15,670.55

Table 12. Assessed value and assessed valuation per ADA for selected districts in Oklahoma.

	District	Assessed Value	ADA	Assessed Valuation Per ADA
1972				
	Auburn	$191,062,533.00	7,524	$ 25,393.74
	Bellingham	148,339,936.00	8,322	17,825.03
	Curlew	3,244,681.00	183	17,730.49
	Inchelium	3,223,308.00	179	18,007.30
	Nespelem	1,016,909.00	175	5,810.90
	North Beach	56,109,444.00	671	83,630.63
	Oakville	6,674,060.00	354	18,853.27
	Queets-Clear.	13,306,410.00	73	182,279.58
	Taholah	4,366,910.00	162	26,956.23
	Wellpinit	1,112,590.00	166	6,702.34
1973				
	Auburn	$216,147,272.00	7,342	$ 29,439.83
	Bellingham	172,211,804.00	8,162	21,099.21
	Curlew	2,891,499.00	155	18,654.83
	Inchelium	2,802,501.00	179	15,656.43
	Nespelem	1,475,054.00	159	9,277.06
	North Beach	59,729,714.00	626	95,414.87
	Oakville	7,265,464.00	347	20,937.93
	Queets-Clear.	13,389,113.00	83	161,314.61
	Taholah	4,543,955.00	140	32,456.82
	Wellpinit	1,142,343.00	169	6,759.42
1974				
	Auburn	$214,538,501.00	7,336	$ 29,244.61
	Bellingham	193,047,687.00	8,308	23,236.36
	Curlew	3,017,254.00	176	17,143.48
	Inchelium	2,568,162.00	196	13,102.86
	Nespelem	1,531,298.00	152	10,074.32
	North Beach	58,819,382.00	693	84,876.45
	Oakville	6,630,517.00	345	19,218.88
	Queets-Clear.	4,941,700.00	86	57,461.62
	Taholah	3,792,041.00	137	27,679.13
	Wellpinit	1,185,264.00	201	5,896.83

Table 13. Assessed value and assessed valuation per ADA for selected districts in Washington.

District	Total Enrollment	Indian Enrollment		Percent of Total		Tribes Affected
		JOM	Title IV	JOM	Title IV	
1972						
Red Rock	213	94	-0-	44.0%	NA	Otoe
Ponca City	6,656	358	-0-	5.3%	NA	Ponca
Carnegie	905	225	-0-	24.8%	NA	Kiowa
Geronimo	366	31	-0-	8.4%	NA	Comanche
Weleetka	214	94	-0-	44.0%	NA	Creek
Briggs	343	125	-0-	36.4%	NA	Cherokee
Smithville	437	80	-0-	18.0%	NA	Choctaw
Dahlonegah	124	103	-0-	83.0%	NA	Cherokee
1973						
Red Rock	231	99	-0-	42.8%	NA	Otoe
Ponca City	6,760	339	-0-	5.0%	NA	Ponca
Carnegie	907	230	-0-	25.3%	NA	Kiowa
Geronimo	424	33	-0-	7.7%	NA	Comanche
Weleetka	131	94	-0-	71.7%	NA	Creek
Briggs	384	164	-0-	42.7%	NA	Cherokee
Smithville	454	72	-0-	15.8%	NA	Choctaw
Dahlonegah	118	106	-0-	89.8%	NA	Cherokee
1974						
Red Rock	182	94	94	51.6%	51.6%	Otoe
Ponca City	6,421	340	340	5.3%	5.3%	Ponca
Carnegie	873	244	244	27.9%	27.9%	Kiowa
Geronimo	287	39	39	13.5%	13.5%	Comanche
Weleetka	201	68	-0-	33.8%	NA	Creek
Smithville	483	80	-0-	16.5%	NA	Cherokee
Briggs	331	165	165	49.8%	49.8%	Choctaw
Dahlonegah	124	110	110	88.7%	88.7%	Cherokee

Table 14. Pupil Population. Total enrollment, Indian enrollment for JOM and Title IV for selected districts in Oklahoma.

District	Total Enrollment	Indian Enrollment JOM	Indian Enrollment Title IV	Percent of Total JOM	Percent of Total Title IV	Tribes Affected
1972						
Queets-Clearwater	78	53	-0-	68%	NA	Makah, Quileute Ozette, Hoh
North Beach	696	127	-0-	18%	NA	Quinault
Taholah	175	162	-0-	93%	NA	Quinault
Auburn	7,887	179	-0-	2%	NA	Muckelshoot-Duwamish
Bellingham	8,670	269	-0-	3%	NA	Lummi
Oakville	373	96	-0-	26%	NA	Chehalis
Curlew	181	22	-0-	12%	NA	Colville
Inchelium	193	139	-0-	72%	NA	Colville
Nespelem	170	146	-0-	86%	NA	Colville
Wellpinit	196	176	-0-	90%	NA	Spokane
1973						
Queets-Clearwater	88	53	-0-	60%	NA	Makah, Quileute Ozette, Hoh
North Beach	695	171	-0-	20%	NA	Quinault
Taholah	159	153	-0-	96%	NA	Quinault
Auburn	8,007	193	-0-	2%	NA	Muckelshoot-Duwamish
Bellingham	8,694	288	-0-	3%	NA	Lummi
Oakville	358	100	-0-	28%	NA	Chehalis
Curlew	185	38	-0-	21%	NA	Colville
Inchelium	188	142	-0-	76%	NA	Colville
Nespelem	178	148	-0-	83%	NA	Colville
Wellpinit	196	175	-0-	89%	NA	Spokane
1974						
Queets-Clearwater	94	46	-0-	49%	NA	Makah,Quileute Ozette, Hoh
North Beach	740	151	141	19%	19%	Quinault
Taholah	168	162	165	96%	98%	Quinault
Auburn	8,216	189	195	2%	2%	Muckelshoot-Duwamish
Bellingham	8,550	279	279	3%	3%	Lummi
Oakville	393	109	109	28%	28%	Chehalis
Curlew	177	38	-0-	21%	NA	Colville
Inchelium	203	151	-0-	74%	NA	Colville
Nespelem	178	152	-0-	85%	NA	Colville
Wellpinit	221	198	198	90%	90%	Spokane

Table 15. Pupil Population. Total enrollment, Indian enrollment for JOM and Title IV for selected districts in Washington.

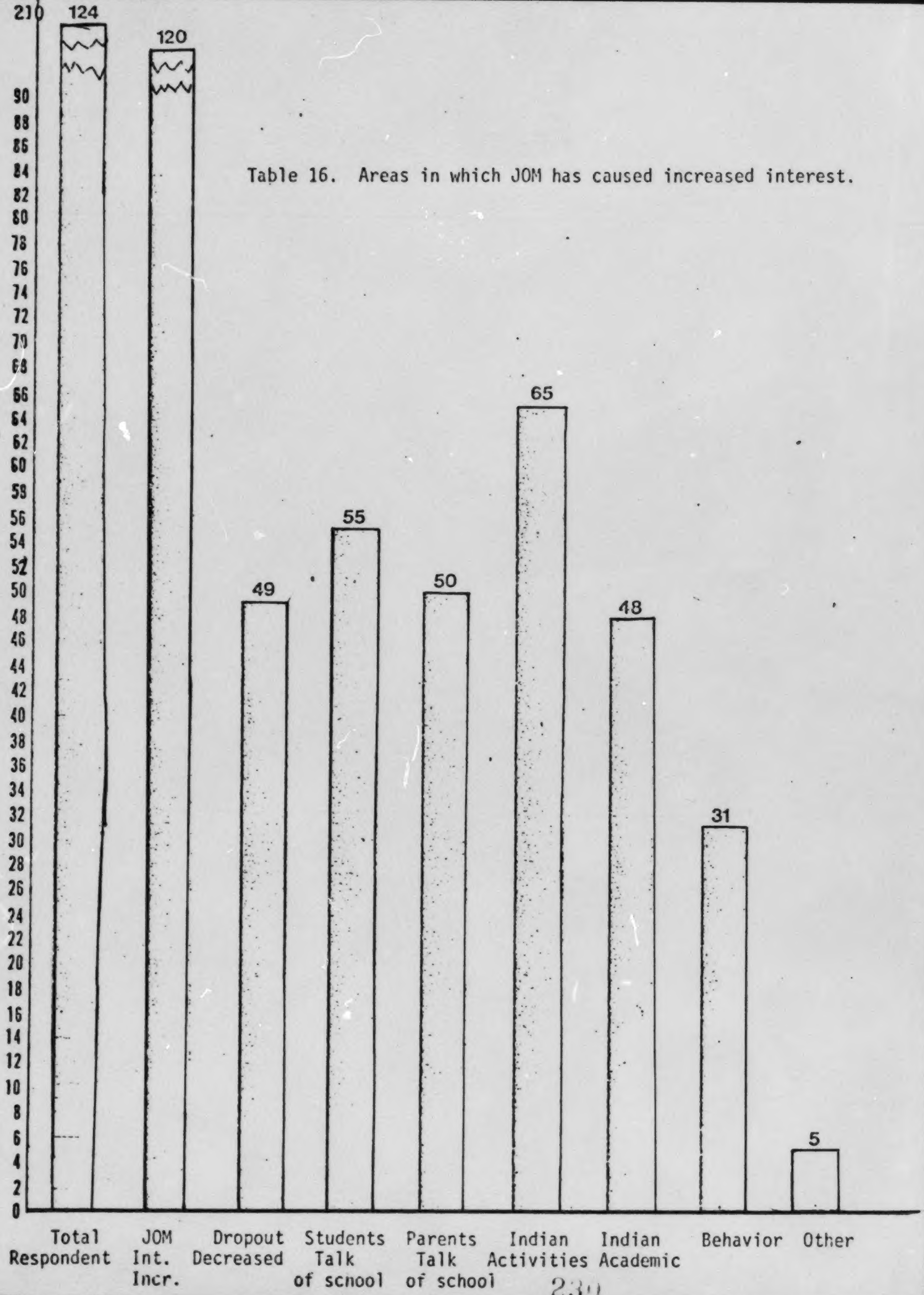

Table 16. Areas in which JOM has caused increased interest.

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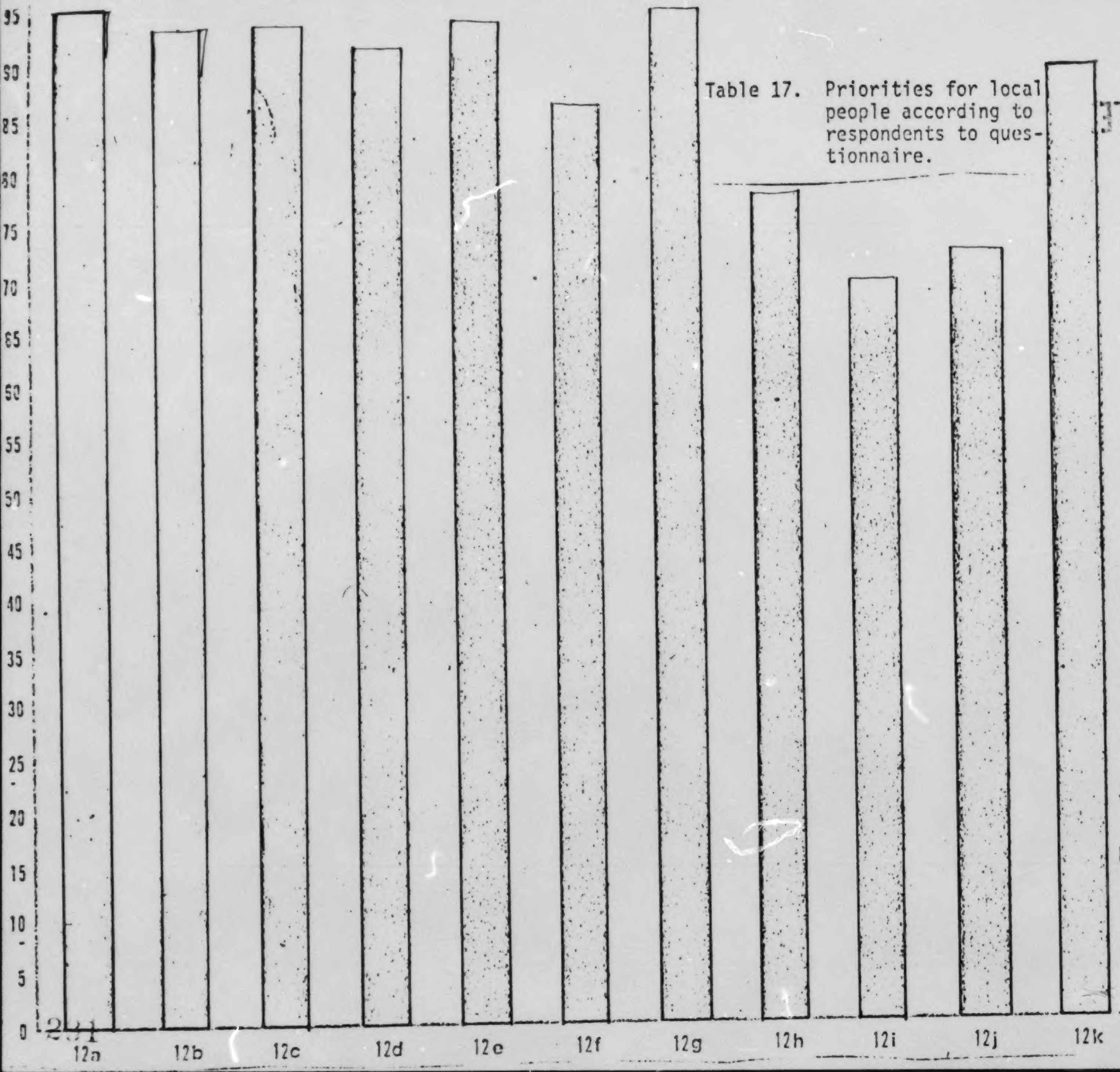
Table 17. Priorities for local people according to respondents to questionnaire.



a. assessing the needs of Indian children in the community.

b. negotiating JOM contracts.

c. planning and developing JOM programs

d. Evaluating and monitoring JOM programs.

e. meeting regularly with professional staf and LEA.

f. hearing complaints.

g. hiring JOM staff.

h. meet school board.

i. Title I parent council.

j/ Title IV parent committees.

k. training sessions on JOM.

WASHINGTON Dist. (by Rank) a) Total Stud. b) JOM Stud.	1974 State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
North Beach a) 740 b) 84	$342.35	$730.30	$1072.65	237 ($ 15,629.) a)138 ($ 67.37) b) 94 ($ 67.37)	($ 7,963.) 94 ($84.71)	($27,425.) 94 ($291.76)	94 ($24,518.) a) b) 94 ($211,36)	a)$1094.24 a)$1727.85	a)$342.35 a)$192.87	9%
[illegible]-Clearwater a) 39 b) 46	$439.71	$426.38	$866.09	N.A.	None	($14,000.) 46 ($304.35)	50 ($17,205.00) a) 4 ($344.10) b) 46 ($344.10)	a)$898.10 b)$1514.54	a)$439.71 a)$350.62	29%
Taholah a) 166 b) 162	$713.14	$629.95	$1348.09	97 ($ 13,329.) a) -0- b)97 ($ 37.41)	($13,538.) 162 ($83.57)	($31,125.) 162 ($192.13)	166 ($85,442.) a) 4 ($514.71 a)162 ($514.71)	a)$161.23 b)$2220.78	a)$718.14 b)$871.63	39%
Auburn a)8216 b) 169	$495.69	$631.30	$1126.90	1182 ($172,129.) a)993 ($145.63) b)189 ($145.63)	($172,129.) 189 ($90.35)	($26,920.) 189 ($142.43)	574 ($91,929.) a)385 ($160.16) b)188 ($160.16)	a)$1,152.60 b)$1665.47	a)$495.69 b)$ 37.48	3%
Bellingham a)8550 b) 279	$595.98	$493.28	$1089.24	941 ($116,864.) a)662 ($124.19) b)279 ($124.19)	($25,464.) 279 ($91.34)	($29,853.) 279 ($107.00)	NA	a)$1099.18 b)$1411.77	a)$592.96 b)$ 20.14	1%
Oakville a) 393 b) 109	$690.03	$138.54	$828.57	234 ($ 12,935.) a)125 ($ 55.38) b)109 ($ 55.38)	($ 8,848.) 109 ($81.17)	($20,000.) 109 ($183.49)	97 ($30,685.) a) -0- b) 97 ($316.34)	a)$852.90 b)$1430.02	a) b)$184.40	18%
Curlew a) 177 b) 28	$613.87	$178.95	$722.82	None	NA	($ 7,162.) 38 ($188.47)	66 ($16,693.) a)28 ($252.92) b)38 ($252.92)	a)$843.77 b)$1234.21	a)$613.87 b)$134.77	14%
[illegible] a) 203 b) 161	$504.09	$ 87.60	$692.69	58 ($ 3,985.) a) -0- b) 58 ($ 68.71)	NA	($37,183.) 151 ($250.42)	170 ($45,557.) a) 19 ($267.98) b)151 ($267.98)	a)$790.61 b)$1237.48	a)$604.09 b)$430.32	38%
Nespelem a) 178 b) 162	$624.38	$ 48.67	$673.05	120 ($ 7,590.) a) 2 ($ 63.25) b)118 ($ 63.25)	NA	($45,712.) 152 ($300.74)	149 ($48,432.) a) -0- b) 149 ($325.05)	a)$677.92 b)$1341.52	a)$624.38 b)$571.54	46%
Wellpinit a)221 b) [illegible]	$592.28	$ 36.96	$629.24	219 ($ 4,905.) a) 14 ($ 23.96) b)196 (23.36)	($15,485.) 198 ($78.21)	($21,393.) 198 ($108.05)	210 ($84,168.) a) 14 ($400.80) b)196 ($400.80)	a)$893.22 b)$1244.00)	a)$592.28 b)$569.91	47%

Table 18. 1974 revenue by sources for 10 Washington State school districts.

BEST COPY AVAILABLE

WASHINGTON Dist. (by Rank) a) Total Stud. b) JOM Stud.	1973 State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
Queets Clearwater						($13,214.32)	48 ($22,825.)	a) $691.80	a)$306.64	
a) 88							a) -0-			
b) 596	$306.64	$385.16	$691.80	None	None	53 ($249.32)	b) 48 ($475.52)	b) $371.78	b)$409.53	37%
North Beach				236 ($19,433.)		($27,200.)	161 ($42,239.)	a) $1034.75	a)$291.96	
a) 695				a)146 ($ 82.34)			a) 71 ($262.35)			
b) 90	$291.96	$693.03	$984.09	b) 90 ($ 82.34)	None	90 ($302.22)	b) 90 ($262.35)	b) $1631.00	b)$127.87	11%
Taholah				91 ($ 9,162.)			131 ($50,070.)			
a) 159				a)89 ($100.74)		($ 46,472.)	a) 3 ($382.21)	a) $1248.19	a)$597.66	
b) 153	$597.66	$489.55	$1087.21	b) 2 ($100.74)	None	153 ($303.74)	b)128 ($382.21)	b) $1831.76	b)$664.84	38%
Auburn				1130 ($129,166.)			525 ($80,255)			
a)8007				a)937 ($114.31)		($ 19,293.)	a)332 ($152.87)	a) $ 985.50	a)$427.91	
b) 193	$427.91	$492.38	$965.29	b)193 ($114.31)	None	193 ($ 99.96)	b)193 ($152.87)	b) $1332.43	b)$ 28.56	3%
Bellingham				983 ($120,188.)						
a)8694				a)695 ($122.27)		($ 14,300.)		a) $ 890.51	a)$501.62	
b) 288	$501.62	$378.77	$880.39	b)288 ($122.27)	None	288 ($ 49.65)	None	b) $1052.31	b)$ 1[illegible].47	3%
Oakville				($ 16,347.)		($ 21,039.)	83 ($29,728.)	a) $ 673.43	a)$526.22	
a) 373				a) 45 ($112.74)			a) -0-			
b) 100	$526.22	$128.62	$654.84	b)100 ($112.74)	None	100 ($210.39)	b) 83 ($358.17)	b) $1336.26	b)$179.93	21%
Cusick						($ 5,450.)	73 ($18,384.)			
a) 185							a) 35 ($251.84)	a) $ 743.40	a)$564.59	
b) 38	$564.59	$118.85	$683.44	None	None	38 ($143.42)	b) 38 ($251.84)	b) $1078.68	b)$128.83	15%
Inchelium	-			51 ($ 4,937.)		($ 33,000.)	140 ($37,778.)	a) $ 736.00	a)$604.26	
a) 186				a) -0-			a) 2 ($269.84)			
b) 142	$604.26	$ 85.24	$689.50	b) 51 ($ 96.80)	None	142 ($232.39)	b)138 ($269.84)	b) $1218.00	b)$402.74	37%
Nespelem				132 ($ 9,555.)		($ 26,500.)	148 ($48,206.)	a) $ 553.80	a)$524.87	
a) 178				a) 2 ($ 72.39)			a) -0-			
b) 146	$524.87	$ 24.10	$548.97	b)130 ($ 72.39)	None	148 ($179.05)	b)148 ($325.72)	b) $1117.00	b)$476.46	46%
Wallpinit				54 ($ 6,098.)			168 ($70,524.)	a) $ 680.43	a)$630.16	
a) 196				a) 2 ($112,93)			a) -0-			
b) 175	$630.16	$ 38.51	$669.67	b) 52 ($112.93)	None	175 ($114.29)	b)168 ($419.79)	b) $1237.31	b)$492.97	42%

Table 19. 1973 revenue by sources for 10 Washington State school districts.

WASHINGTON 1972

Dist. (by Rank) a) Total Stud. b) JOM Stud.	State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
[illegible]-Clearwater				40 ($,682.)		($13,433.00)	52 ($29,901.)	a)$739.72	a)$341.95	
a)77				a)-0-			a) -0-			
b)58	$341.95	$397.77	$739.72	b)40 ($3.682.)	None	53 ($253.45)	b)52 ($556.62)	b)$1062.64	b)$610.69	45.2%
North Beach				201 ($15,519		($26,372.)	134 ($38,358.)	a)$973.40	a)$386.77	
a)686				a)74 ($77.02)			a) 7 ($286.25)			
b)127	$386.77	$572.83	$959.60	b)127 ($77.02)	None	127 ($207.65)	b)127 ($286.25)	b)$1530.71	b)$116.98	10.8%
Taholah				87 ($7408.)		($31,400.)	148 ($56,200.00)	a)1461.97	a)$514.59	
a)175				a)3 ($85.10)			a)3 ($379.73)			
b)172	$514.59	$482.50	$997.09	b)169 ($85.10)	None	172 ($182.56)	b)145 ($379.73)	b) $1541.24	b)$542.90	35.2%
Auburn				1182($112,699.)		($18,375.)	516 ($90,937.)	a)$828.57	a)$456.05	
a)8062				a)993 ($95.35)			a)353 ($176.23)			
b)[illegible]	$456.05	$453.05	$909.10	b)189 ($95.35)	None	163 ($112.73)	b)163 ($176.23)	b)$1323.28	b)$ 27.54	3.0%
Bellingham				906 ($96,982.)				a)$866.83	a)523.17	
a)8670				a)637 ($107.04)						
b)260	$523.17	$334.53	$857.70	b)260 ($107.04)	None	None	NA	b)$964.74	b)$107.04	11%
Oakville				145 ($13,263.)		($19,000.)	95 ($26,722.)	a)$667.46	a)$513.59	
a)373				a)49 ($ 91.47)			a) -0-			
b) 96	$513.59	$137.69	$651,28	b)96 ($ 91.47)	None	96 ($197.92)	b)95 ($278.00)	b)$1218.67	b)$158.14	19%
Curlew							67 ($17,118.)	a)$674.79	a)$522.95	
a)181							a)31 ($255.49)			
b) 36	$522.95	$108.08	$631.03	NA	None	None	b)36 ($255.49)	b)$886.52	b)$94.57	13%
Enchalium				40 ($5,654.)		($33,000.)	127 ($34,917.)	a)$683.91	a)$602.55	
a)193				a) -0-			a) -0-			
b)139	$602.55	$ 81.36	$683.91	b)40 ($141.35)	None	139 ($237.41)	b)127 ($274.97)	b)$2021.52	b)$381.21	35%
Nespelem				150 ($8,679.)		($25,294.)	150 ($48,626)	a)$739.46	a)$655.44	
a)170				a) 4 ($57.86)			a) 4 ($324.17			
b)146	$656.84	$ 23.85	$680.69	b)45 ($57.86)	None	146 ($173.27)	b)146 ($324.17	b)$1235.99	b)$485.88	41%
Wellpinit				163 ($5,657.)		($19,000.)	163 ($61,352.)	a)$620.56	a)$583.71	
a)186				a) -0-			a) -0-			
b)176	$583.71	$ 36.85	$620.56	b)163 ($ 32.14)	None	176 ($107.95	b)163 ($348.59)	b)$1109.24	b)$438.82	41%

Table 20. 1972 revenue by sources for 10 Washington State school districts.

OKLAHOMA 1974

Dist. (by Rank) a) Total Stud. b) JOM Stud.	State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
Red Rock				103 ($17,685)	($4,678.40)	($7,986.50)	54 ($8,180)	a) $673.67	a)$227.35	
a) 192				a) 13 ($171.70)			a) 27 ($151.48)			
b) 94	$227.35	$374.46	$501.83	b) 90 ($171.70)	94 ($49.77)	94 ($84.96)	b) 27 ($151.48)	b) $947.43	b)$259.23	30%
Ponca City				568 ($109,762)	($25,622.70)	($10,823.87)	None	a) $599.54	a)$251.60	
a) 6421				a) 228 ($193.30)						
b) 340	$251.60	$341.08	$592.68	b) 340 ($193.30)	340 ($75.36)	340 ($31.83)		b) $893.10	b)$ 22.78	4%
Carnegie				320 ($46,524)	($21,852.86)	($34,832.15)	271 ($90,286)	a) $513.37	a)$476.36	
a) 873				a) 26 ($145.39)			a) 27 ($333.16)			
b) 244	$476.36	$ 16.70	$493.06	b) 294 ($145.39)	244 ($89.56)	244 ($142.75)	b)244 ($333.16)	b) $900.55	b)$221[illegible]	31%
Geronimo				80 ($7,432)	($1,980)	($2,690)	102 ($7,930)	a) $437.62	a)$272.36	
a) 287				a) 59 ($92.90)			a) 63 ($77.75)			
b) 39	$273.36	$122.41	$395.77	b) 21 ($92.90)	39 ($50.77)	39 ($68.07)	b) 39 ($77.75)	b) $643.28	a)$ 69.80	15%
Graham Welectka				46 ($9,390)	None	($13,347)	51 ($12,031)	a) $645.62	a)$351.76	
a) 201				a) 19 ($204.13)			a) 2 ($235.90)			
b) 63	$351.76	$117.82	$469.58	b) 27 ($204.13)		68 ($196.28)	b) 49 ($235.90)	b) $916.90	b)$172.98	27%
Smithville				66 ($16.704)	None	($9,408)	110 ($37,264)	a) $564.65	a)$357.51	
a) 433				a) 42 ($253.09)			a) 42 ($338.76)			
b) 80	$357.51	$145.45	$502.96	b) 24 ($253.69)		80 ($117.60)	b) 68 ($368.76)	b) $984.44	b)$129.91	21%
Briggs				90 ($15,660)	($11,054.22)	($24,874.90)	90 ($32.341)	a) $544.83	a)$365.11	
a) 331				a) 60 ($174.00)			a) 8 ($358.23)			
b) 166	$366.11	$94.25	$460.36	b) 30 ($174.00)	165 ($67.00)	165 ($150.75)	b) 82 ($358.23)	b) $887.78	b)$333.97	42%
Dahlonogah				108 ($12,831.47)	($7,987.15)	($12,451.77)	112 ($27,735)	a) $562.69	a)$344.79	
a) 124				a) 5 ($118.81)			a) 2 ($247.63)			
b) 110	$344.79	$67.50	$412.29	b) 103 ($118.81)	110 ($72.61)	110 ($113.19)	b)110 ($247.63).	b) $956.69	b)$491.99	54%

Table 21. 1974 revenue by sources for eight Oklahoma school districts.

OKLAHOMA 1973

Dist. (by Rank) a) Total Stud. b) JOM Stud.	State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
E ROCK				130 ($11,435.51)		($5,100)	50 ($18,829)	a)$ 618.29	a)$212.65	
231				a) 33 ($87.97)			a) 11 ($376.58)			
99	$212.65	$352.27	$564.92	b) 97 ($87.97)	None	99 ($51.52)	b) 39 ($376.58)	b)$ 851.11	b)$ 31.51	12%
ca City				390($114,900)		($28,897.70)		a)$ 531.46	a)$220.65	
[illegible]				a) 51 ($294.62)			None			
[illegible]	$220.65	$308.49	$529.14	b)339 ($294.62)	None	339 ($85.24)		b)$1967.28	b)$ 47.78	8%
gregie				239 ($58,165)		($50,908)	320 ($141,367)	a)$ 461.42	a)$407.45	
967				a) NA ($252.89)			a) 90 ($441.77)			
[illegible]	$407.45	$ 10.21	$417.66	b) NA ($252.89)	None	230($221.34)	b) 230 ($441.77)	b)$1332.89	b)$276.12	40%
nimo				21 ($3,087)			131 ($15,967)	a)$ 362.37	a)$215.64	
424				a) 0 ($147.00)			a) 112 ($121.89)			
33	$215.84	$111.62	$327.46	b) 21 ($147.00)	None	None	b) 19 ($121.89)	b)$ 491.19	b)$ 44.94	12%
ham Weleetka				21 ($8,459.58)		($20,426.64)	49 ($13,077)	a)$ 479.91	a)$321.41	
181	$321.41	$136.47	$457.88	a) 6 ($403.31)			a) 3 ($266.88)			
[illegible]				b) 15 ($403.31)	None	94 ($217.30)	b) 46 (265.88)	b)$ 870.14	b)$186.55	30%
ggs				30 ($24,606)		($18,527.66)	30 ($1,228)	a)$ 692.24	a)$567.16	
[illegible]				a) 10 ($820.20)			a) 10 ($40.93)			
[illegible]	$567.16	$ 85.95	$653.11	b) 20 ($820.20)	None	164 ($112.97)	b) 20 ($40.93)	b)$ 871.07	b)$115.53	15%
thville				66 ($18,321)		($20,006.45)	104 ($41,349.81)	a)$ 613.15	a)$375.60	
[illegible]				a) 43 ($277.59)			a) 35 ($397.59)			
72	$375.60	$169.97	$545.57	b) 23 ($277.59)	None	72 ($277.87)	b) 69 ($397.59)	b)$1293.13	b)$176.33	24%
lonegah				108 ($14,529.43)		($17,929)	108 ($29,369)	a)$ 482.50	a)$321.99	
118				a) 5 ($134.53)			a) 2 ($271.94)			
106	$321.99	$ 59.14	$381.13	b)103 ($134.53)	None	106 ($169.14)	b) 106 ($271.94)	b)$ 952.91	b)$523.95	59%

Table 22. 1973 revenue by sources for eight Oklahoma school districts.

OKLAHOMA 1972

Dist. (by Rank) a) Total Stud. b) JOM Stud.	State Rev. per Enroll.	Local Rev. per Enroll.	State & Local per Enroll.	Title I Elig. Enroll. a) Non-Ind. b) Indian	Title IV Elig. Enroll.	JOM Elig. Enroll.	P.L. 874 Elig. Enroll. a) Non-Ind. b) Indian	St., Fed. & Local Rev. per Enroll. a) Non-Ind. b) Indian	St.&Fed. Av. per Enroll. a) State b) Fed.	Fed. % of Total
Red Rock				129 ($20,598)		($5,142)	41 ($29,476)	a) $317.78	a)$227.35	
a) 213				a) 35 ($159.67)			a) 9			
b) 94	$227.35	$ 17.32	$244.67	b) 34 ($159.67)	None	94 ($54.70)	b) 32	b) $703.78	b)$259.23	62%
Ponca City				356 ($11,176)		($32,770)		a) $538.08	a)$227.95	
a) 6556				a) 0 ($312.29)			None			
b) 558	$227.95	$310.13	$538.08	b)356 ($312.29)	None	358 ($91.54)		b) $940.17	b)$ 21.63	1.%
Carnegie				225 ($54,602)		($39,741)	220 ($96,056)	a) $356.80	a)$340.44	
a) 905				a) 0 ($242.68)			a) 0			
b) 225	$340.44	$ 16.36	$356.80	b)225 ($242.68)	None	225 ($180.64)	b)220 ($436.62)	b)$1207.04	b)$280.50	[illegible]
Geronimo				111 ($4925)			111 ($21,213)	a) $427.71	a)$231.07	
a) 366				a) 0 ($44.37)			a) 94			
b) 31	$231.07	$122.72	$353.79	b) 31 ($44.37)	None	None	b) 17 ($191.11)	b) $502.96	b)$380.24	48%
Graham Weleetka				21 $3876)		($15.698)	42 ($15.698)	a) $459.16	a)$274.24	
a) 214				a) 12 ($184.57)			a) 5			
b) 94	$274.24	$137.05	$411.29	b) 9 ($184.57)	None	94 ($206.55)	b) 37 ($373.76)	b) $782.63	b)$100.54	20%
Briggs				125 ($20,799)		($11,850.11)	124 ($24,534)	a) $400.61	a)$324.18	
a) 343				a) 0 $$166.39)			a) 0			
b) 125	$324.18	$ 76.43	$400.61	b)125 ($166.39)	None	125 ($94.80)	b)124 ($197.85)	b) $848.07	b)$166.71	29%
Smithville				38 ($12,124)		($17,954.95)	115 ($47,907.37)	a) $578.57	a)$358.99	
a) 437				a) 17 $$319.05)			a) 38			
b) 80	$358.99	$160.05	$519.04	b) 21 ($319.05)	None	80 ($224.44)	b) 77 ($416.59)	b)$1228.20	b)$247.29	32%
Dahlonegah				100 $9,123.35)		($17,025)	109 ($22,456)	a) $418.04	a)$296.28	
a) 124				a) 4 $$91.23)			a) 6			
b) 103	$296.28	$ 45.53	$341.81	b) 96 ($91.23)	None	103 ($165.29)	b)103 ($206.02)	b) $798.13	b)$391.97	53%

Table 23. 1972 revenue by sources for eight Oklahoma school districts.

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~~213~~

[illegible] Washington [illegible]

Title I *
Title IV @
JOM $

1972 - 1975

DISTRICT		Academic Achievement				Cultural Awareness				Vocational or Career Develop.				Early Childhood			
		72	73	74	75	72	73	74	75	72	73	74	75	72	73	74	75
Nespelem	I	**	**	**	**												
	IV			@@	@@												
	JOM	$$	$$	$$	$$		$	$	$					$	$	$	$
Queets Clearwater	I	*	*	*	*												
	IV																
	JOM	$	$	$	$	$	$	$	$					$	$	$	$
Curlew	I	*	*	*	*												
	IV							@	@								
	JOM			$	$			$	$								
Oakville	I	*	*	*	*												
	IV			@	@												
	JOM			$	$		$	$	$								
Wellpinit	I	*	*	*	*												
	IV			@	@								@				
	JOM	$			$	$	$	$	$		$			$	$	$	$
Taholah	I	*	*	*	*												
	IV			@	@				@				@				
	JOM	$$	$$	$$	$$						$			$	$	$	$
North Beach	I	*	*	*	*												
	IV																
	JOM		$		$		$	$	$								
Inchelium	I	*	*	*	*												
	IV																
	JOM	$$	$$	$$	$$	$	$	$	$								
Bellingham	I	*	*	*	*												
	IV																
	JOM		$	$	$												
Auburn	I	*	*	*	*												
	IV				@												
							$	$	$								

DISTRICT		Continuing Education				Home-School Coordination				Parental Costs			
		72	73	74	75	72	73	74	75	72	73	74	75
Nespelem	I												
	IV												
	JOM											$	$
Queets Clearwater	I												
	IV												
	JOM	$	$	$	$			$	$			$	$
Curlew	I												
	IV												
	JOM			$	$				$				
Oakville	I												
	IV			@	@								
	JOM			$	$	$	$	$	$		$	$	$
Wellpinit	I												
	IV												
	JOM					$	$	$	$				
Taholah	I												
	IV							@	@				
	JOM								$	$	$	$	$
North Beach	I												
	IV												
	JOM	$	$$	$$	$$			$	$				$
Inchelium	I												
	IV												
	JOM	$$	$$	$$	$$			$	$				
Bellingham	I												
	IV												
	JOM		$	$$	$$							$	$
Auburn	I												
	IV												
		$	$	$	$			$	$	$	$	$	$

Table 24. Distribution of Title I, Title IV, and JOM supplementary programs according to the thrust of each program for 10 Washington State school districts, 1972-75.

DISTRICT		Academic Achievement				Cultural Awareness				Vocational or Career Develop.				Early Childhood				Continuing Education				Home-School Coordination				Parental Costs		
		72	73	74	75	72	73	74	75	72	73	74	75	72	73	74	75	72	73	74	75	72	73	74	75	72	73	74
Red Rock	I	***	**	**	**																							
	IV														@	@	@											
	JOM	$	$	$	$	$	$	$	$					$	$	$	$							$	$		$	$
Ponca	I	**	**	**	**																							
	IV																											
	JOM	$	$	$	$																	$	$	$	$	$	$	$
Carnegie	I	*	*	*	*																							
	IV			@	@																							
	JOM		$	$	$							$	$														$	$
Geronimo	I	*	*	*	*																							
	IV																											
	JOM							$	$																			$
Graham	I	**	**	**	**																							
	IV											@	@															
	JOM											$	$															
Briggs	I	*	*	*	*																							
	IV			@	@																							
	JOM	$	$	$	$			$	$															$	$	$	$	$
Smithville	I	*	*	*	*																							
	IV																											
	JOM	$	$	$	$																					$	$	$
Ardmore	I																											
	IV																											
	JOM																											
Dahlonegah	I		**	**	**																							
	IV			@	@																							
	JOM			$	$												$	$										

Table 25. Distribution of Title I, Title IV, and JOM supplementary programs according to the thrust of each program for nine Oklahoma school districts.

JOHNSON O'MALLEY APPROPRIATIONS AND ALLOCATIONS FOR FISCAL YEAR 1975

In tracing Fiscal Year 1975 allocations, it was necessary to work with budgeted amounts only as most contracts would not close out their Fiscal Year 1975 expenditures until October, 1975.

The source for the allocation amounts was the Indian Education Resources Center in Albuquerque, New Mexico, which is responsible for the distribution of Johnson O'Malley funds to all areas. There were some discrepancies. For instance, IERC indicated that the Portland Area office had allocated $485,000.00 to the state of Idaho. The Portland Area indicated that they had allocated $461,000.00 in FY 75 funds to the state. Likewise the state of Washington had been allocated $999,000.00 from the area office yet the IERC indicated they had received $975,000.00

It has been extremely difficult to trace the channeling of this money as there exist inconsistencies, discrepancies everywhere one turns. If we had included what the Portland Area said were the state allocations based on the amount they received, then their total amount, Area by Area, would not add to the total indicated by the IERC.

In addition, when the Study Team attempted to trace the money, state by state, contractor by contractor, inconsistencies continued to surface. When the team added the breakdowns of all the contractors, they did not add up to what was given as their allocation, even considering the carryover money.

Again, many of the problems encountered in the tracing of FY 75 allocations, indicated the lack of accountability or more specifically, a lack of standardized record keeping processes within each Area.

The Indian student enrollment figures used are those quoted by the Bureau of Indian Affairs in the 1975 Directory of Public Schools served under the Johnson O'Malley program. These figures differ from those submitted by the Areas and by the contractors. However, because the appropriations quoted were those of the Bureau of Indian Affairs, we decided that standardization required also the use of Bureau of Indian Affairs figures on enrollment.

An attempt was made to further break down each contractor's allocations to the local school districts. If the amounts of the contractor's budgeted figures do not add up, it is due to the fact that we accepted what each Area Office quoted as the breakdown of their allocations.

We found that $1,213,000.00 was taken from the total appropriation at the Washington, D. C. Bureau of Indian Affairs level, before it ever reached the Indian Education Resource Center for distribution to the Area Offices. There is not any justification for this siphoning of money, since Bureau of Indian Affairs staff members charged with working with the Johnson O'Malley program exist at the Indian Education Resource Center in Albuquerque, only. It is apparent that this money is being creamed off for the purpose of subsidizing the BIA's Washington, D.C. Central office. Program money must be spent on programs; there is no excuse for this illegal "cream" off the top. It is also evident that there exists no standardized percentage taken off each year but apparently arbitrary decisions are made year to year. It is recommended that this practice be ended.

AMOUNT APPROPRIATED AND AMOUNTS ALLOCATED

On the following eleven pages are given the 1975 Johnson O'Malley appropriation and the amounts allocated by Area, and within Area, by Contractor and school district or program.

FISCAL YEAR 1975

JOHNSON O'MALLEY APPROPRIATIONS

and

ALLOCATIONS

JOM Appropriation:	$ 28,352,000.00
ADMINISTRATIVE EXPENSES	1,213,000.00
Received in Albuquerque(IERC)	27,139,000.00
Peripheral Dorm Program	1,542,455.00
Program Audits	165,000.00
Disbursed From Albuquerque	25,431,545.00
Received In:	
Aberdeen Area Office:	3,050,000.00
Albuquerque Area Office:	1,939,000.00
Anadarko Area Office:	645,000.00
Billings Area Office:	1,195,000.00
Juneau Area Office:	5,684,000.00
Minneapolis Area Office:	2,069,000.00
Muskogee Area Office:	1,587,000.00
Navajo Area Office:	5,807,545.00
Phoenix Area Office:	1,430,000.00
Portland Area Office:	1,530,000.00
Sacramento Area Office:	350,000.00
Eastern Area Office:	145,000.00

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STATES	TOTAL STATE ALLOCATION	INDIAN ENROLLMENT
ABERDEEN AREA:	($3,050,000.00)	(7,791)
Nebraska	$ 670,000.00	865
North Dakota	740,000.00	2,143
South Dakota	1,640,000.00	4,783
ALBUQUERQUE AREA	($1,939,000.00)	(7,348)
Colorado	$ 292,000.00	897
Albuquerque	1,647,000.00	6,451
ANADARKO AREA	($ 645,000.00)	(4,277)
Kansas	$ 102,000.00	220
Oklahoma (Western)	543,000.00	4,057
BILLINGS AREA	($1,195,000.00)	(7,422)
Montana	$1,060,000.00	6,424
Wyoming	135,000.00	998
JUNEAU AREA	($5,684,000.00)	(14,879)
Alaska	$5,684,000.00	14,879
MINNEAPOLIS AREA	($2,069,000.00)	(7,286)
Iowa	$ 124,000.00	231
Michigan	111,000.00	711
Minnesota	1,330,000.00	4,342
Wisconsin	504,000.00	2,002
MUSKOGEE AREA	($1,587,000.00)	(10,522)
Oklahoma (Eastern)	$1,587,000.00	10,522
NAVAJO AREA	($5,807,545.00)	(31,825)
Arizona	$3,355,000.00	16,582
New Mexico	2,200,000.00	13,815
Utah	252,545.00	1,428
PHOENIX AREA	($1,430,000.00)	(9,254)
Arizona	$1,180,000.00	6,024
Nevada	230,000.00	2,710
Utah	20,000.00	520

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STATES	TOTAL STATE ALLOCATION	INDIAN ENROLLMENT
PORTLAND AREA	($1,530,000.00)	(8,656)
Idaho	$ 485,000.00*	1,648
Oregon	70,000.00	1,025
Washington	975,000.00*	5,983
SACRAMENTO AREA	($ 350,000.00)	(1,940)
California	$ 350,000.00	1,940
EASTERN AREA	($ 145,000.00)	(341)
Florida	$ 10,000.00	245
Mississippi	15,000.00	96
New York	120,000.00	Not available

* Area Office in Portland documents Idaho and Washington receiving amounts different then that quoted from IERC. Idaho's quoted amount is that received in FY 1974

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AREA ALLOCATIONS

ABERDEEN AREA	$3,050,000.00
Nebraska:	670,000.00
Omaha Tribe	$ 340,000.00
Administration	27,032.00
Special Programs	97,983.00
Basic Support Programs	214,085.00
Santee Tribes	$ 85,000.00
Administration	8,529.62
Special Programs	24,777.25
Basic Support Programs	51,693.13
Winnebago Tribe	125,000.00
Administration	15,055.10
Special Programs	42,364.90
Basic Support	67,580.00
North Dakota	$ 740,000.00
United Tribes of N.D. Dev. Corp.	$ 660,000.00
Administration	52,229.16
Indirect Cost	3,700.00
State Board Meetings	5,696.00
Contingency Fund	5,262.00
Special Programs	597,361.67
FY 74 Carryover	4,248.83
Ft. Totten School District	$ 80,000.00
South Dakota	$1,640,000.00
United Sioux Tribes	415,196.00
Administration	45,946.00
Special Programs	214,250.00
Basic Support Programs	155,000.00
Sisseton-Wahpeton Sioux Tribe	$ 590,000.00
Administration	43,669.00
Special Programs	128,000.00
Basic Support Programs	437,331.00
Oglala Sioux Educ. Society	$ 229,687.00
Administration	31,992.00
Special Programs	197,695.00
Rosebud Sioux Tribe	$ 550,000.00
Administration	34,000.00
Basic Support Programs	310,000.00
Special Programs	206,000.00

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AREA ALLOCATIONS

ALBUQUERQUE AREA	$1,939,000.00
Colorado	$ 292,000.00
Southern Ute Tribe	126,048.00
Administration	5,000.00
Special Programs	121,048.00
Ute Mountain Ute Tribe	160,081.00
Administration	4,000.00
Special Programs	156,081.00
Albuquerque	$1,647,000.00
All Indian Pueblo Council	1,117,828.00
Administration	93,296.00
Special Programs	1,024,532.00
Canoncito Navajo	114,401.00
Administration	6,318.00
Special Programs	108,093.00
Mescalero Apache Tribes	177,046.00
Administration	6,325.00
Special Programs	170,721.00
Zuni Pueblo	238,923.00
Administration	4,000.00
Special Programs	234,923.00
*Area Contingency Fund	4,673.00
ANADARKO AREA	$ 645,000.00
Kansas	102,000.00
Special Programs	102,000.00
Oklahoma(western)	543,000.00
Administration	6,253.00
Indian Policy Groups	20,000.00
Special Programs	516,747.00
BILLINGS AREA	$1,195,000.00
Montana	1,060,000.00
Administration	70,903.00
Special Programs	1,040,587.99
FY 74 Carry over?	51,490.99

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AREA ALLOCATIONS

BILLINGS AREA(cont.)	$1,195,000.00
Wyoming	$ 135,000.00
Department of Public Instruction	135,000.00
Administration	35,132.81
Special Programs	99,867.19
JUNEAU AREA	$5,684,000.00
Alaska	
Alaska Federation of Natives	5,617.376.00
Administration	
Special Programs	
Aleut League	66,624.00
Special Programs	66,624.00
MINNEAPOLIS AREA	
Iowa	$ 124,000.00
Community School District of South Tama County	107,464.00
Administration	6,100.00
Parental Cost	20,097.00
Basic Support Programs	126,811.00
FY 74 Carryover?	45,544.00
Sac and Fox Tribe of the Mississippi In Iowa	16,536.00
Administration	1,654.00
Special Programs	14,872.00
Michigan	$ 111,000.00
Bay Mills Indian Ed. Program	$ 25,909.00
No Administration	
Special Programs	25,090.00
Hannahville Indian Ed. Comm.	$ 22,700.00
Administration	2,200.00
Special Programs	20,500.00
Keween aw Bay Ed. Comm.	$ 50,563.00
Administration	4,590.00
Special Programs	45,973.00
FY 74 Carryover?	7,107.00
Saginaw Chippewa Indian Ed Comm.	$ 26,162.00
Administration	250.00
Special Programs	

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AREA ALLOCATIONS

MINNEAPOLIS AREA

Minnesota	$1,330.000.00
Red Lake Tribal Council	$ 332,000.00
Administration	10,000.00
Basic Support	217,170.00
Special Programs	330,500.00
FY 74 Carryover??	231,167.00
Minnesota Chippewa Tribe	$ 893,126.00
Administration	89,859.00
Special Programs	826,139.98
Basic Support Programs	217,170.00
Shakipee Mdewakanton Sioux Bus. Co.	$ 7,629.00
Administration	914.00
Special Programs	10,700,00
FY 74 Carryover?	3,985.00
Red Wing School District	$ 20,000.00
Special Programs	20,000.00
Morton School District	$ 21,500.00
Upper Sioux Local Indian Ed. Comm.	$ 22,600.00
Administration	2,260.00
Special Programs	25,449.00
FY 74 Carryover?	5,109.00
Wisconsin	$ 504,000.00
Lac Courte Oreilles Tribe	$ 53,411.00
Administration	1,150.00
Special Programs	57,123.00
FY Carryover(74)	4,862.00
Lac du Flambeau Tribe	$ 43,109.00
Administration	000.00
Special Programs	47,632.00
FY 74 Carryover?	4,523.00
Lakeland Union High School	$ 44,558.00
Administration	2,812.00
Special Programs	48,182.00
FY 74 Carryover?	6,446.00

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AREA ALLOCATIONS

MINNEAPOLIS AREA	
Wisconsin	$ 504,000.00
Oneida Tribe	$ 83,776.00
Administration	8,376.38
Special Programs	84,777.55
FY 74 Carryover?	9,387.93
Stockbridge-Munsee Tribe	$ 24,464.00
Administration	1,050.00
Special Programs	26,345.00
FY 74 Carryover?	2,931.00
Wisconsin Dept. of Public Inst.	$ 273,000.00
Administration	25,760.00
Special Programs	316,627.00
FY 74 Carryover?	69,387.00
* Menominee Restoration Committee	$ 400,000.00
Administration	39,500.00
Special Programs	370,500.00
* Special Legislation	
MUSKOGEE AREA	$1,587.000.00
Oklahoma, (Eastern)	
Oklahoma State Dept. of Educ.	$1,587,000.00
Administration	51,105.00
Other Administrative Costs	267,504.06
Special Programs	1,284,621.10
NAVAJO AREA	$5,807,545.00
Cuba Independent Schools	$ 117,617.00
Navajo Division of Educ.	139,154.00
Administration	139,154.00'
Mr. Bert Pappam	18,518.00
Administration	18,518.00
Central Consolidated Schools	512,655.00
Administration	18,374.00
Special Programs	494,281.00
Bloomfield Municipal Schools	104,672.00
Administration	2,616.00
Special Programs	102,056.00

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AREA ALLOCATIONS

NAVAJO AREA	$5,807,545.00
Farmington Municipal Schools	90,000.00
Administration	1,000.00
Special Programs	89,000.00
Gallup-McKinley Schools	1,219,226.00
Administration	134,048.00
Border/Special Programs	1,085,178.00
Jemez Mountain Independent	22,672.00
Administration	1,000.00
Special Programs	21,683.00
Magdalena Municipal Schools	85,252.00
Administration	00.000
Special Programs	85,252.00
*Albuquerque Border Dorms	174,464.00
Arizona	$3,355,000.00
Arizona Border Districts	$ 613,000.00
Chinle School District	999,849,08
Basic Support	999,849.08
Kayenta Public Schools	413,571,90
Basic Supports	413,571.90
Ganado School District	358,661.05
Basic Support	358,661.05
Puerco School District	123,745.92
Basic Support	123,745.92
Tuba City School District	489,930.55
Basic Support	489,930.55
Window Rock School District	681,725.50
Basic Support	681,725.50
UTah	$ 252,545.00
San Juan School District	111,823.00
Administration	13,685.00
Special Programs	98,138.00
Utah Navajo Development Council	93,831.00
Administration	14,441.00
Special Programs	81,390.00

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AREA ALLOCATIONS

PHOENIX AREA	$1,430,000.00
Arizona	1,180,000.00
Administrative Costs	30,000.00
Department of Education	1,020,000.00
Administration	26,853.19
Special Programs	993,146.81
Additional Special Program Money	130,000.00
Nevada	$ 230,000.00
State Department of Education	230,000.00
Administration	14,216.00
Special Programs	215,784.00
Utah	$ 20,000.00
Uintah	10,000.00
Tooele County	10,000.00
PORTLAND AREA	$1,530,000.00
Idaho	485,000.00
State Department of Education	461,000.00
Administration	65,197.00
Special Programs	395,803.00
Oregon	$ 70,000.00
Warm Springs Confederated Tribes	$ 25,000.00
Special Programs	25,000.00
Special Programs to School Dist.	35,000.00
Burns Public School District	10,000.00
Washington	
State Department of Education	999,000.00
Administration	72,120.00
Special Programs	997,110.00
FY74 Carryover	71,102.00

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AREA ALLOCATIONS

SACRAMENTO AREA	$ 350,000.00
California	
State Department of Education	$ 350,000.00
Administrative Costs	583.00
Special Programs	356,047.00
Funds Transferred from other sources:	6,630.00
EASTERN AREA	$ 145,000.00
Florida	
Seminole Agency	$ 10,000.00
Mississippi	
Choctaw Agency	$ 15,000.00
New York	
St. Regis Mohawk	$ 30,000.00
Oneida Nation	30,000.00
Tonawanda Seneca	30,000.00
Seneca Nation	30,000.00

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VII. STATES, FINANCES, AND EDUCATION

ARIZONA

Of the eighteen school districts studied in Arizona, sixteen had over 80% Indian population and a number of these which were located on the reservation approached 100% (See Table 26). These school districts, particularly those serving the Navajo tribe in northern Arizona and the Apache reservations in eastern Arizona have many administrative and financial problems in common:

(1) Very little or none of the land in these districts is taxable and most tax revenues come from taxable improvements on Indian land, such as pipelines, utility facilities, etc., usually owned by large corporations. These, however, do not constitute a substantial tax base in most cases, giving many of these districts an assessed valuation of under $5,000,000. (See Table 27). Local taxes in these districts contribute from 3 to 53 percent of the total revenues. In most of the districts local taxation is not a major source of revenue. Furthermore, bonding at a maximum capacity of 10% assessed valuation for school construction with such a low tax base (See Table 28) is pointless since most structures currently needed would cost in the millions of dollars.

(2) Maintenance and operation costs run high due to the isolation, vast expanse of land covered, and poverty of the populations served. Window Rock school district, which is typical of most of the reservation districts, documents these extra expenses as follows: Increased costs of health services for students which are not reimbursed by any state or federal plan is about $23,775 per year. Labor costs for free lunch programs which reach 60% of the student population equal $148,680 for 1974-75. Extra labor, supplies, and materials for their 30 school

bus fleet is $135,000 per year and extra administrative costs for trips to the county or state offices add $23,000 per year. High numbers of temporary units, teacherages, and extreme variation in temperatures and weather, increase maintenance costs as much as $60,900 per year. All these extra costs amount to more than 11% of the district's budget. (3) Funding patterns such as a heavy dependence on federal aid, meager state aid, deficit spending and a number of administrative problems are held in common by these districts. (See Table 29). An expanded discussion of these follows.

The State of Arizona plays a large part in administration of public school finance for the districts covered in this study. First, the state determines to a large extent how much PL 874 monies the districts will receive. The PL 874 Desk in the State Department of Education processes applications for impact aid based on the formula employing the national average per pupil cost. For 1974-75 this was $510.17 per A student on the elementary level. In Montana, utilizing the comparable districts formula, some districts base their impact aid on as much as $1,400 per A student.

Second, Johnson O'Malley funds for the school districts are received through state contract with the BIA area office. Contract negotiations for allocation of funds for the 1974-75 school year were not completed until mid-December of the past year, thus creating a funding crisis for several reservation districts.[1]

Third, each school district receives an amount of aid from the state. The sum total of this state aid accounts for approximately 40% of the general fund of the state. Sources of revenue for this fund are as follows: state sales tax, 41%; individual and corporate income tax, 24%; state tax on real property, 11%; state luxury tax, 7%; other sources, 17%.[2]

School districts in Arizona receive two separate allocations from the state: one for maintenance and operation and one for transportation. For the purposes of state aid, maintenance and operation includes all expenses of running a school district except transportation and a capital outlay category, which includes furniture and equipment, vehicles not primarily used for pupil transportation, textbooks, athletic equipment, remodeling and other improvements (both by contract and internal) site improvements, capital outlay for tuition students, and construction expenses including retiring of debts.[3]

In 1974 the state arrived at a new formula which gives a single amount of state aid for M & O to each district rather than the multiple categories of state aid used in the pre-1974-75 school years. This aid is based on a district's Budget Cost Level, a dollars-per-state-supported-classroom figure computed in 1974 which is used, with yearly alterations, to determine state support.

The state allocation formula operates as follows:

a. A district's 1973-74 revenues in the following categories are totaled:

1. basic grant
2. financial assistance
3. equalization aid
4. county aid
5. estimated auto lieu tax receipts
6. state permanent school fund
7. district M & O levies

8. cash balance

b. From the sum of revenues, transportation costs are subtracted to yield a Total Budget Cost Level.

c. The number of state supported classrooms is computed by dividing the total district population by 26 for elementary and by 24 for high school.

d. The Total Budget Cost Level is divided by the number of state supported classrooms to yield a Budget Cost Level per classroom.

The state also calculated a figure based on state average cost of education per classroom which is called the Basic Support Level. This is a dollars per classroom figure which acts as a ceiling for state aid. If a district's Budget Cost Level/classroom is higher than the Basic Support Level/classroom the latter is used instead of the BCL in the final calculation as follows:

e. Take Budget Cost Level Per Classroom or Basic Support Level (whichever is lower). Multiply by number of state supported classrooms.

f. Total assessed valuation x $1.30/100 = local tax contribution.

g. Subtract local tax contribution from product in calculation "e" = state aid.

In years subsequent to 1973-74 the original Budget Cost Level and Basic Support Level have been utilized with 7% increases yearly. Also, during the five years after initial implementation of this formula an equalizing factor is added to the Budget Cost Level to eventually make it equal to the Basic Support Level. This is done by subtracting the BCL from the BSL. One fifth of the difference is added to the BCL the first year, one fourth the second, etc. until 1978-79 funding year when all of the difference will be added and all districts will theoretically be funded at the Basic Support Level. Each year before that, however, districts with a BCL lower than the BSL lose thousands of dollars in state aid that will never be made up. (See recalculation of state aid, below.)

None of the districts in Arizona with high Indian student population had a BCL in 74-75 that reached the Basic Support Level (See Table 30). This is not because the cost of education is lower in Indian districts than non-Indian ones. In fact, Indian districts rank among the highest in cost per student (See Table 31.) The budget cost levels in the Indian districts are low because they are not based on cost but on revenue. And only certain kinds of the regular yearly revenue into an Indian district are counted in the calculation. District taxes for maintenance and operation are counted but PL 874 monies, which are in lieu of taxes are not counted. Since most Indian districts studied had high PL 874 contribution to their revenues and low tax contribution in 1973-74, the resulting low budget cost levels are not surprising. A recalculation of the budget cost levels of the highly impacted Indian districts including their 1973-74 PL 874 revenues gives all the districts a BCL/classroom close to or above the Basic Support Level. (See Table 32).

Secondly, state support is given on the basis of number of classrooms, arrived at by dividing enrollment by 24 for high school and 26 for elementary. Districts with less than these figures per classroom lose out in this calculation. Peach Springs school district with

145 students actually had 9 classrooms (one for each grade K-8) instead of the 5.58 arrived at in the state formula. Thus it gets only two-thirds the state aid it would if a sparsity factor were included in the calculation.

Using 1973-74 revenue figures as a base with yearly adjustments causes difficulties as well. The 7% yearly increases allowed in the BCL assume a uniform relatively low yearly increase in cost, not at all characteristic of the extremely high growth and cost increases in reservation schools (19.09% average cost increase in 1974-75 over 1973-74).[4] Secondly, inequities inherent in the original calculations are perpetuated. Districts starting out with low budget cost levels due to meager revenues and negative cash balances continue to have the lower budget cost levels, while rich districts having a high cash balance and M & O levies revenue in 1973-74 continue to be funded on a higher level.

The separate state transportation aid is arrived at through a calculation by the state as to the district's need based on number of miles traveled and number of students served. The total state appropriation for that year is divided up among the districts, each one's share being weighted as to their comparative need. In the 1974-75 school year the districts were funded at 90% and in 1975-76 are anticipated to be funded at 60% of their entitlement.[5] Furthermore, the entitlement itself is considerably less than the district's stated need in transportation. JOM, PL 874, and local funds are used heavily by the districts in this expense category.

Probably the most controversial aspect of public education funding for Indians in Arizona is the use of Johnson O'Malley funds for basic education costs rather than according to the strictly supplemental intent of these funds. The regulations under which JOM can be used for basic funding include the following: (1) minimum 70% Indian enrollment in the district, (2) as a means of meeting minimal state standards for education, and (3) only after a district tax rate equal to the state average is levied and the average state aid is given.[6]

All of the Indian districts studied had well over the 70% Indian enrollment required. There are, however, no minimum standards of education in Arizona and in their absence, JOM is used as a means to balance whatever budget is arrived at for that year. The cost per pupil in the districts using JOM basic for 1974-75 in the adopted budgets ranged from $1,014 to $7,745 per student. The latter figure reflects a $1,453,244.94 capital outlay expense for a new high school requested to be paid from JOM basic funds.[7]

There is a tendency in JOM basic districts to stick to a tax rate very close to the minimum allowed for JOM. Of the 12 districts studied, only 6 had a rate above $4.00/100 in 1974-75. (See Table 27.) There is little motivation, however, to raise the tax rate in districts with assessed valuations of $1,000,000 or less as a number of those studied are. Doubling the tax rate would increase that category's contribution to the budget by only 3 or 4%. Of the 12 districts studied which received JOM basic, only 4 received state aid equal to or above the state average in 1974-75. (See Table 29.)

Given the fact that all other revenues coming into the districts are limited by formulas, and local taxation is a meager source of revenue, JOM is looked to as the only flexible figure in the budget and is used in many cases to make it balance. Theoretically then, JOM is the first figure reduced given any increased revenues in other categories. In districts where costs are kept to the most necessary and to a minimum, this practice seems to be in keeping with the intention of allowing the use of JOM as basic support only in exceptional circumstances.

There are, however, attempts to abuse JOM basic. In Chinle school district's adopted budget almost $1,000,000 in JOM went into M & O revenues that totaled in excess of the M & O expenditures by $242,000. The latter figure -- intended to be the local taxes contribution in M & O -- was deducted from the proposed local tax contribution of $619,000 in transportation and capital outlay, clearly a case of attempting to use JOM to supplant local taxes. Likewise, the previously mentioned figure of almost $1.5 million JOM for furniture and equipment might be questioned as well. Furthermore, if the JOM basic districts had been funded at the Basic Support Level in 1974-75, the resulting increase in state aid would total nearly $3.5 million. (See Table 33.) Since any increase in revenues brings a corresponding reduction in JOM basic, the $3.5 million could have been saved for supplemental programs had the districts been funded up to the Basic Support Level by the state.

Another factor in Arizona financing of public education is deficit spending. Arizona state law permits a school district to spend all of its adopted budget, whether or not expected revenues are actually received. Registered warrants, which banks are required to honor at 6% interest, are issued by the school districts for payment of bills.[8]

A number of districts studied had deficits for over three years running despite the state regulation requiring that a deficit must be made up in taxes the next year. Ganado school district indicated on the adopted budget that $1,436,161 was going to be raised from local taxes to erase the deficit but set a tax rate that could generate less than $600,000, thus perpetuating the deficit.

A major source of the deficit for 1974-75 will result from districts overprojecting their JOM revenues. (See Table 34.) Budgeted amounts exceed actual receipts by over $1,000,000 in two districts.

There are finally a number of administrative situations that render hardship and confusion to the effort to finance public education for Indians in Arizona. One of these is the practice of paying tuition for students bussed out of one district to another district's public schools.

The actual numbers of students who will be going out of district is never known when expenditures are budgeted, thus creating a category highly susceptible to overexpenditure. Students frequently transfer back and forth during the school year in between two districts, further complicating the situation financially.

Secondly, a number of schools studied in Apache County were classified as elementary schools but have authorization to teach high school subjects. Since no regular high schools were available to the students in these districts this arrangement was the only alternative to boarding school. The school district suffers, however, in its funding since it receives PL 874 monies at only the elementary rate. Also, since it is only an elementary district, no tax may be levied to bond for high school construction.

The northern reservation districts do pay taxes for the high school district which encompasses all of Apache County. However, the high school funded by these taxes is located in the southern part of the county and serves the non-reservation population there.

There is at least one case of obvious gerrymandering of a school district. In the middle of Ganado school district sits the El Paso Natural Gas compound with a total assessed valuation of $3,000,000. It was made into Navajo Compressor Station school district to serve its 30 students, avoiding incorporation with the surrounding deficit-ridden, predominantly Indian school district.

Finally, administrative difficulties arise from the existence of two parallel systems of education for Indian children in Arizona: the public schools and the BIA schools. There are a number of reasons why they co-exist, the most obvious being that this is a transitional period between the earliest years when all Indian children were educated only in BIA boarding schools to a time in the future when, if trends continue, most will be educated in public schools. There are other reasons why Indian children continue to attend boarding school. Some live too far from school to be transported daily by bus and some live too far from a road to walk to the bus. Other children attend boarding school because of conditions at home that make it impossible to study or to get ready early enough in the morning. Others attend because of troubles at home.

Problems arise, at least administratively, since these are parallel rather than cooperative systems. Interviews with district superintendents and tribal education personnel revealed some of the following:

(1) BIA equipment is not utilized to aid public education in such situations as a road grader going only as far as the BIA bus goes along a road where the public school bus goes farther.

(2) BIA classrooms stand empty nearby public schools which are often at double their capacity or housed in temporary quarters.

(3) Children sent to boarding school because of problems at home often run away and appear in the public school during the school year creating a difficult administrative and educational situation.

(4) Public schools sponsor para-professional personnel to go to college to be certified only to find some of them afterward taking better paying jobs in the BIA system. This lack of cooperation is particularly difficult to understand given the fact that many of the problems facing public schools are due to their having to accommodate a large influx of students resulting from their leaving the BIA system.

The evidence suggests that Arizona's Indian districts are in severe financial difficulty and confusion. The state, in that it controls a large portion of the district funding, must assume considerable responsibility.

The current method of determination of impact aid yields meager revenues for the Indian districts studied. The alternative method of requesting PL 874 aid based on comparing the impacted district with five similar school districts would probably result in much larger PL 874 allocations.

Secondly, there is an Arizona state law that a district must take up a deficit the following year in taxes. This is not being enforced in the districts studied where several have had increasingly larger deficits for 3 years running. Nor has the state contributed extra financial assistance to bring the districts out of their financial crisis.

Third, state aid in Arizona is allocated by a plan that lacks a concept of the total range and level of the cost of education in a given district.

State aid does not cover all the operational expenses as defined by the school district's budget. There is a deliberate reduction of responsibility which excludes the categories of textbooks, furniture, equipment, remodeling and renovation -- none of which a school district can do without.

Furthermore, the level of support does not bear any correlation to the need of the district. All but one of the Indian districts studied having costs per pupil higher than the state average in 1973-74 (See Table 31 .) had less than the state average support in 1974-75 (See Table 29 .) State revenues have not been sufficient to fund all the districts in the state at the Basic Support Level with $1.30/100 local contribution for the first four years of implementing the new plan. As mentioned previously, the intention is to equalize the Budget Cost Levels and Basic Support Level by the 1978-79 school year. Implied in this is the acknowledgment that all districts need to be funded at this level. The fact that the 1974-75 elementary Basic Support Level was only $800 per child with an average state cost per child of $902 the previous year indicates that the Basic Support Level is not even a minimum cost of education figure. It seems obviously unfair, therefore, to compute the state aid of districts with costs per pupil higher than the state average with a Budget Cost Level less than the Basic Support Level. The State of Arizona has saved itself millions of dollars by funding impacted districts on Budget Cost Levels, which are low from leaving out their large PL 874 contribution from the calculations. Inasmuch as many of these are Indian reservation districts with exceptionally high extra costs and negative cash balances, this seems a poor choice for economizing. An alternative would be to fund all the districts at the Basic Support Level and subtract a higher local contribution, perhaps $1.50/100 instead of the present $1.30/100 times the assessed valuation of the district. This way a rich district with a high assessed valuation and having a significant budgetary alternative in raising local tax rates would take the lesser share. By doing this, the Arizona state plan would take on a concept of state aid being given to a district inversely to its ability to generate local funds as is done in the Alaska plan.

At the local level, remedies for the current financial situation are not promising. In a few districts where costs have reached more than twice the state average, some budgetary controls on spending might help. However, a significant increase in revenue from local taxation is precluded, even at confiscatorily high rates, by the low tax bases of most of the districts. Furthermore, even if local funding were achieved, it would not likely be in the interest of Indian self-determination in public education. It is the taxpayers who traditionally have been acknowledged to have the major voice in decision-making for the district. This usually means the local home owners, the parents of the children attending school in the district.

However, in almost all of the Indian districts studied 80-99% of the taxes were paid by large corporations, whose interests are not necessarily the same as those of the parents and students of the school district. As previously mentioned, PL 874 monies are not seen by the districts as having been contributed by the Indian community in lieu of taxes and therefore do not carry a corresponding acknowledged right for policy determination.

Notes To Arizona Report

1. Survival of the Public Schools, Navajo Division of Education, Window Rock, Arizona, 1975, pp. 56, 57.
2. Department of Finance, Arizona State Department of Education.
3. From State of Arizona, Department of Education, School District Annual Budget, July 1, 1974 to June 30, 1975, Adopted Budget, Form ADE-RB-7 (4-15-74).
4. Computed from Adopted Budgets of 16 Arizona School Districts.
5. Interview with Charlotte Duvall of the Arizona State Department of Education.
6. Johnson O'Malley Regulations, Federal Register, Vol. 39, No. 163, August 21, 1974.
7. From the Adopted Budget, 1974-75 for Monument Valley High School District.
8. Survival of Public Schools, p. 10.

State	District	Total Enrollment	Indian Enrollment		Tribes
Arizona	Alchesay	366	311	85%	White Mountain Apache
	Chinle	1,135	1,067	94%	Navajo
	Ft. Thomas Elem.	342	294	86%	San Carlos Apache
	Ft. Thomas H. S.	152	125	82%	
	Ganado	1,461	1,332	91%	Navajo
	Indian Oasis	1,051	1,022	97%	Papago
	Mesa Elem.	18,479	559	1%	Salt River Pima
	Mesa H. S.	8,051	165	2%	
	Keams Canyon	570	516	91%	Hopi, Navajo
	Kayenta	952	1,278	94%	Navajo
	Monument Valley	410			Navajo
	Peach Springs	145	138	95%	Hualapai
	Puerco	688	549	80%	Navajo
	Sacaton	834	977	93%	Maricopa
	Tuba City Elem.	1,274	1,229	96%	Navajo
	Tuba City H. S.	635	621	98%	Navajo
	White River	1,135	1,067	94%	White Mountain Apache
	Window Rock	2,445	2,106	86%	Navajo

Table 26. Total enrollment and Indian enrollment of districts studied in Arizona. Data from Arizona State Department of Education.

District	Total Assessed Valuation	Assessed Valuation Per Pupil	Tax Rate	Actual Expenditures Per Pupil
White River	$ 1,282,123	$ 1,129.62	$ 3.34 per $100	$
Alchesay	1,282,123	3,503.07	2.54	1,615.68
Chinle	7,316,732	1,795.08	3.54	1,562.11
Ft. Thomas Elem.	3,219,071	9,412.49	1.32	1,058.46
Ft. Thomas H. S.	3,219,071	21,178.10	2.83	1,404.88
Ganado	8,677,984	5,939.76	6.73	1,464.24
Indian Oasis	420,403	400.00	13.49	1,563.79
Mesa Elem.	206,343,585	11,166.38	2.81	877.56
Mesa H. S.	206,343,585	25,629.56	2.42	1,164.86
Keams Canyon	2,288,496	4,014.91	3.34	2,287.53
Kayenta	14,743,280	15,486.64	5.41	1,344.16
Monument Valley H. S.	14,743,280	35,959.22	5.41	3,899.44
Peach Springs	5,117,314	35,291.82	1.33	1,030.27
Puerco	6,292,012	9,145.48	3.34	1,133.75
Sacaton	1,800,000	1,706.67	3.35	1,236.92
Tuba City Elem.	1,500,000	1,177.39	4.71	1,853.00
Tuba City H. S.	1,500,000	2,362.20	4.71	3,962.91
Window Rock	7,432,723	2,156.91	3.34	1,467.11

Table 27. 1974-75 total assessed valuation, assessed valuation per pupil, tax rates, and expenditures per pupil for districts studied in Arizona. Tax information is from the Ramada Inn Study. Actual expenditures are for operational budget as defined by Arizona, From district and county superintendents.

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District	Bonding Capacity	Bond Encumbrance	Encumbrance as Per cent of Capacity
Alchesay	$ 128,212	$ -	
Chinle	731,673	-	
Ft. Thomas Elem.	321,907	45,000	14%
Ft. Thomas H. S.	321,907	45,000	14%
Ganado	867,798	650,000	75%
Indian Oasis	42,040	N. A.	
Mesa Elem.	20,634,358	1,357,500	7%
Mesa H. S.	20,634,358	1,269,400	6%
Keams Canyon	228,849	-	
Kayenta	2,652,647	310,000	12%
Monument Valley	1,474,328	310,000	21%
Peach Springs	511,731	38,387	8%
Puerco	654,416	325,000	50%
Sacaton	180,000	-	
Tuba City Elem.	150,000		
Tuba City H. S.	150,000	210,000	140%
Window Rock	743,272	390,000	52%

Table 28. Bonding capacity and encumbrance compared for various Arizona school districts. Bonding capacity information from Ramada Inn Study. Bond encumbrance from county and local school district superintendents.

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	I	II	III	IV	V	VI	VII	VIII	IX	X	XI
District	Total Revenue	Revenue from State	Revenue from State as Per cent of Total Revenue	(State - Average $ 603.15) Revenue from State per Pupil	Local Revenue	Local Revenue as Per cent of Total Revenue	Local Revenue per Pupil	State Aid Dollars Generated for Each Dollar of Local Aid	PL 874 Revenue	PL 874 Revenue as Per cent of Total Revenue	PL 874 Revenue per Eligible Pupil
White River	$ 1,520,207.33	$ 647,336	43	$ 570.34	$ 42,145.96	3	$ 37.13	$ 15.36	$ 527,546	35	$ 509.46
Alchesay	669,348.51	245,692	37	671.29	31,612.38	5	86.37	7.77	147,786	22	509.61
Chinle	5,722,827.11	2,096,566	37	514.37	238,852.99	4	58.60	8.78	1,778,452	31	510.17
Ft. Thomas Elem.	471,907.12	201,204	42	588.32	48,858.14	10	142.86	4.12	122,705	26	500.84
Ft. Thomas H. S.	252,726.84	91,341	36	600.93	83,786.42	33	551.23	1.09	52,419	21	519.00
Ganado	1,555,535.94	665,953	43	455.82	568,483.45	37	389.11	1.17	671,281	43	508.35
Indian Oasis	185,075.18	561,701	30	534.44	84,099.42	5	80.02	6.68	490,783	27	510.17
Mesa Elem.	17,127,815.55	12,612,020	74	682.51	2,475,229.00	14	133.95	5.10	367,114	2	388.48
Mesa H. S.	9,573,539.85	6,294,808	66	781.87	2,341,833.00	24	290.87	2.69	137,597	1	398.25
Keams Canyon	860,031.73	381,151	44	668.69	71,934.27	8	126.20	5.30	263,247	31	510.17
Kayenta	1,634,850.15	395,527	24	415.47	588,078.11	36	617.73	0.67	445,888	27	510.17
Monument Valley	1,099,803.38	209,740	19	511.56	585,949.83	53	1,434.34	0.36	214,931	20	532.01
Peach Springs	184,785.87	24,490	13	168.90	70,100.00	38	483.45	0.35	69,250	37	503.64
Puerco	966,796.57	365,953	38	531.91	216,927.22	22	315.30	1.69	205,353	21	542.05
Sacaton	1,064,841.54	421,688	40	505.62	64,850.00	6	77.76	6.50	383,606	36	506.08
Tuba City Elem.	2,280,074.00	654,502	29	513.74	61,191.79	3	48.03	10.70	629,600	28	509.18
Tuba City H. S.	1,378,720.00	387,019	28	609.48	56,261.82	4	88.60	6.88	335,218	24	534.21
Window Rock	3,739,117.80	1,513,449	40	619.00	217,428.58	6	88.93	6.96	1,088,100	29	513.38

Table 29. 1974-75 total, State, local, and PL 874 revenues compared for school districts. Total revenues are actual revenues excluding categorical funds. Data from district and county superintendents.

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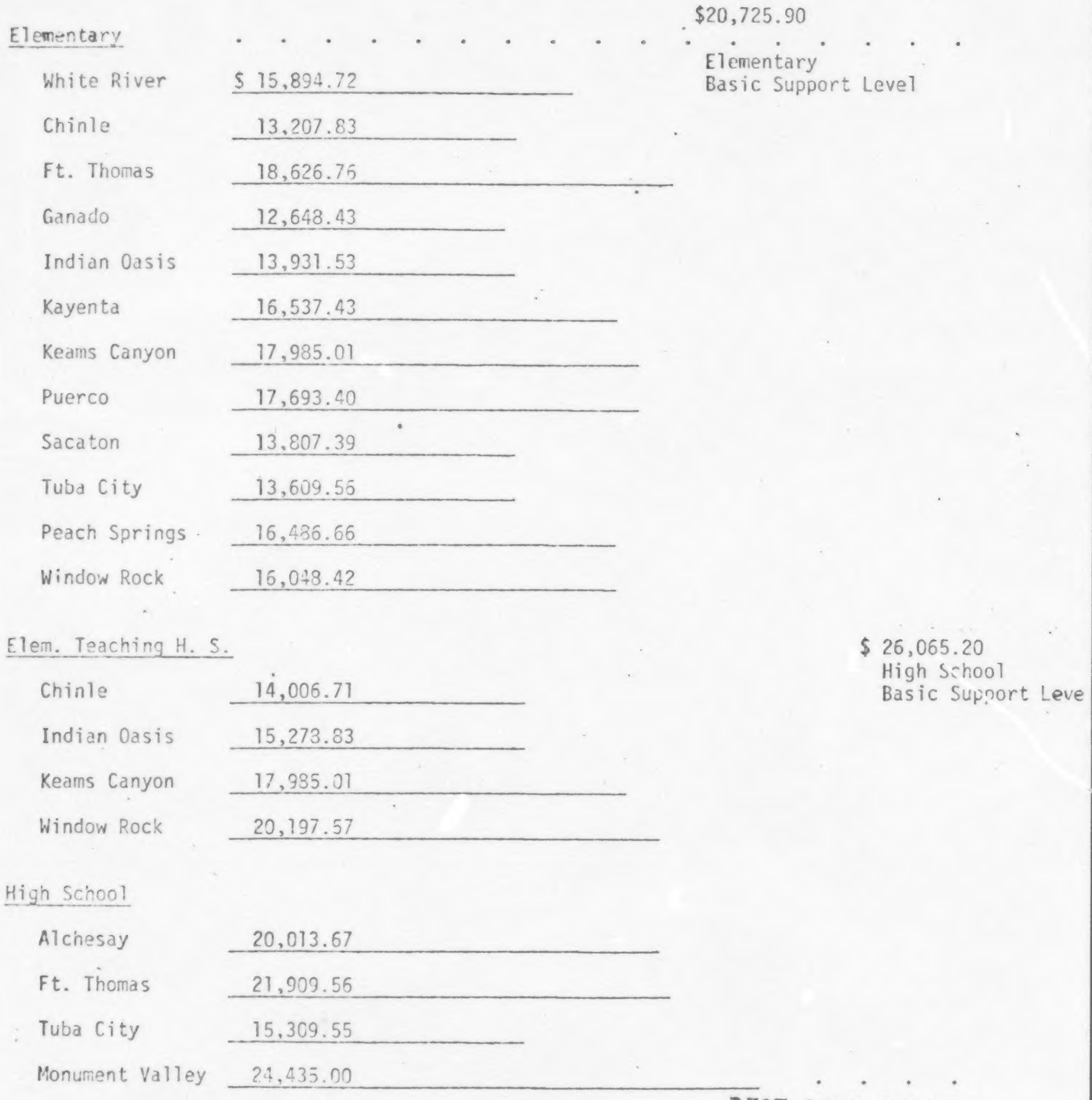

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Table 30. Budget Cost Levels for 16 Arizona school districts compared with the Basic Support Level for 1974-75. Data from DNA Legal Services, Window Rock, Arizona.

District	Total Expenditures in 1974-75	Expenditures per Pupil	Expenditures per Pupil as Per cent of Average for State in 1973-74
White River	$ 1,385,574.73	$ 1,220.77	94
Alchesay	591,339	1,615.68	140
Chinle	6,367,178	1,562.11	136
Ft. Thomas Elem.	361,994	1,058.46	92
Ft. Thomas H. S.	213,542	1,404.88	122
Ganado	2,139,257	1,464.24	127
Indian Oasis	1,643,545	1,563.79	136
Mesa Elem.	17,026,207	877.56	76
Mesa H. S.	9,667,286	1,164.86	101
Keams Canyon	766,172	2,287.53	199
Kayenta	2,177,726	1,344.16	117
Monument Valley	1,598,770	3,899.44	338
Peach Springs	149,389	1,030.27	89
Puerco	780,021	1,133.75	98
Sacaton	1,031,589	1,236.92	107
Tuba City Elem.	2,360,728	1,853.00	161
Tuba City H. S.	2,516,448	3,962.91	344
Window Rock	3,587,089	1,467.11	127

Table 31. Total expenditures in 1974-75, expenditures per pupil, and expenditures per pupil as per cent of statewide average expenditure per pupil in 1973-74, for 18 Arizona school districts. Total expenditures include all actual expenditures but supplementary programs and debt service. Data from district and county superintendents.

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$ 20,725.90
Elementary
Basic Support Level

Elementary	
White River	$ 25,330.26
Chinle	19,681.03
Ft. Thomas	26,116.00
Ganado	19,576.86
Indian Oasis	24,388.14
Kayenta	26,294.43
Keams Canyon	24,469.96
Puerco	22,434.13
Sacaton	23,870.89
Tuba City	23,280.94
Peach Springs	25,558.55
Window Rock	23,861.40

$ 26,065.20
High School
Basic Support Level

Elem. Teaching H. S.	
Chinle	20,861.94
Indian Oasis	26,826.95
Keams Canyon	24,469.96
Window Rock	30,065.36

High School	
Alchesay	27,788.22
Ft. Thomas	27,915.79
Tuba City	21,338.79
Monument Valley	34,772.43

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Table 32. Budget Cost Levels for 16 Arizona school districts recalculated to include PL 874 revenues. PL 874 revenues from 1973-74 Arizona Superintendents Report. Budget Cost Levels from DNA Legal Services, Window Rock, Arizona.

	Actual State Aid 1974-75	PL 874 Revenue 1973-74	1974-75 Recalculated State Aid Including PL 874 Revenue in Calculation	Difference Between Actual and Recalculated State Aid	Per cent Increase in State Aid
Chinle	$ 2,096,565.69	$ 1,017,710	$ 3,019,087.60	$ 922,521.41	44%
Ganado	665,952.57	433,041	1,098,993.51	433,041.00	65%
Puerco	365,952.57	142,356	463,105.91	97,173.34	27%
Window Rock	1,513,448.73	821,403	2,014,163.18	500,714.45	33%
Tuba City Elem.	654,502.19	468,089	997,419.75	342,917.56	52%
Tuba City H. S.	387,018.98	159,450	530,257.97	143,238.99	37%
Ft. Thomas Elem.	201,203.89	95,271	295,806.87	94,602.98	47%
Ft. Thomas H. S.	91,340.92	36,163.65	117,520.90	26,179.98	29%
Peach Springs	24,490.07	50,096	47,061.86 +	22,571.79 +	92% +
			117,944.44 *	93,454.37 *	382% *
Kayenta	395,526.58	359,410	551,072.56	155,545.98	39%
Monument Valley HS	209,740.44	176,470	237,490.98	27,750.54	13%
Keams Canyon	381,151.27	135,023	432,644.38	51,493.11	14%
White River	647,335.91	394,503	849,468.71	202,132.80	31%
Alchesay H. S.	245,692.13	99,929	323,170.17	77,478.04	32%
Indian Oasis	561,701.05	420,357	862,404.99	300,703.94	54%
Sacaton	421,688.50	320,894	641,628.38	219,939.88	52%

+ Computed using number of "state supported classrooms" in district.
* Computed using actual number of classrooms in district.

Table 33. Actual State aid and State aid recalculated with PL 874 revenues included, for 16 Arizona districts. Actual State aid information from DNA Legal Services, Window Rock, Arizona. PL 874 information from Arizona Superintendents Report, 1973-74.

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	Local Taxes			Johnson O'Malley			
	Budgeted	Actual	Difference	Budgeted	Actual	Difference	Total Difference
Chinle	$ 345,228	$ 238,853	$ (106,370)	$ 1,302,183	$ 999,849	$ (302,334)	$ (408,704)
Ganado	1,436,161	568,483	(867,678)	358,661	358,661	-0-	(867,678)
Puerco	226,040	216,927	(9,113)	74,866	123,746	48,880	39,767
Window Rock	248,253	217,429	(30,824)	939,913	681,726	(258,187)	(289,011)
Tuba City Elem.	65,019	61,192	(3,827)	506,836	283,425	(223,411)	(227,238)
Tuba City H. S.	65,019	56,262	(8,757)	395,802	206,505	(189,297)	(198,054)
Ft. Thomas Elem.	47,603	48,858	1,255	-0-	-0-	-0-	1,255
Ft. Thomas H. S.	85,810	83,786	(2,024)	-0-	-0-	-0-	(2,024)
Peach Springs	61,137	70,100	8,963	-0-	-0-	-0-	8,963
Kayenta	865,305	588,078	(277,227)	1,604,064	250,861	(1,353,203)	(1,630,430)
Keams Canyon	76,436	71,934	(4,502)	73,792	73,792	-0-	(4,502)
White River	42,287	42,146	(141)	9,128	-0-	(9,128)	(9,269)
Alchesay H. S.	32,158	31,612	(546)	119,577	119,577	-0-	(546)
Monument Valley HS	864,580	585,950	(278,630)	1,892,668	162,711	(1,729,957)	(2,008,587)
Indian Oasis	94,180	84,099	(10,081)	340,110	440,110	100,000	89,919
Sacaton	61,071	64,850	3,779	200,000	200,000	-0-	3,779

Table 34. Budgeted and actual 1974-75 revenues from Johnson O'Malley and from local taxes for 18 Arizona school districts. Budgeted figures from district adopted budgets. Actual figures from district and county superintendents.

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District	Actual Local Revenue from Property Taxes	Local Revenue less Estimated Revenue from Major Corporations	Amount in Column II, per Pupil	Total PL 874 Revenue	PL 874 Revenue per Pupil
White River	$ 42,145.96	$ 6,743.35	$ 5.94	$ 527,546	$ 509.46
Alchesay	31,612.38	5,057.98	13.82	147,786	509.61
Chinle	238,852.99	9,555.08	2.34	1,778.452	510.17
Ft. Thomas Elem.	48,858.14	7,329.57	21.43	122,705	500.84
Ft. Thomas H. S.	83,786.42	12,567.96	82.68	52,419	519.00
Ganado	568,483.45	5,684.83	3.89	671,281	508.35
Indian Oasis	84,099.42	-0-	-0-	490,783	510.17
Mesa Elem.	2,475,229.00	N/A	N/A	367,114	388.48
Mesa H. S.	2,341,833.00	N/A	N/A	137,597	398.25
Keams Canyon	71,934.27	6,474.08	11.36	263,247	510.17
Kayenta	588,078.11	76,450.15	80.30	445,888	510.17
Monument Valley	585,949.83	76,173.48	185.79	214,931	532.01
Peach Springs	70,100.00	-0-	-0-	69,250	503.64
Puerco	216,927.22	119,309.97	173.42	205,353	542.05
Sacaton	64,850.00	5,836.50	7.00	383,606	506.08
Tuba City Elem.	61,191.93	9,790.72	7.69	629,600	509.16
Tuba City H. S.	56,261.82	9,001.89	14.18	335,218	534.21
Window Rock	217,428.58	(6,522.86)	2.67	1,088,100	513.38

Table 35. Comparison of estimated local revenues from property taxes paid by taxpayers other than major corporations, with PL 874 revenues, for 18 Arizona school districts. Actual revenue figures from district and county superintendents. Estimated property tax paid by corporations, from Arizona Tax Study Association. PL 874 revenue from DNA Legal Services, Window Rock, Arizona.

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District	Total District Revenue	Revenue per Pupil	Revenue Excluding JOM Funds	Revenue Excluding JOM Funds per Pupil	Revenue Excluding all Federal Aid	Revenue Excluding all Federal Aid, per Pupil
White River	$ 1,520,207.33	$ 1,338.21	$ 1,520,207.33	$ 1,338.21	$ 992,661.33	$ 873.82
Alchesay	669,348.51	1,828.82	549,771.27	1,502.11	401,985.27	1,098.32
Chinle	5,722,827.11	1,404.03	4,722,978.00	1,158.73	2,944,526.00	722.41
Ft. Thomas Elem.	474,907.12	1,388.62	474,907.12	1,388.62	352,122.12	1,029.60
Ft. Thomas H. S.	252,726.84	1,662.68	252,726.84	1,662.68	200,307.84	1,317.81
Ganado	1,638,587.17	1,121.55	1,279,926.12	876.06	608,645.12	416.59
Indian Oasis	1,850,745.18	1,760.94	1,410,635.18	1,342.18	919,852.18	875.22
Mesa Elem.	17,127,815.55	926.88	17,127,815.55	926.88	16,820,701.55	910.26
Mesa H. S.	9,573,539.85	1,189.11	9,573,539.85	1,189.11	9,435,942.85	1,172.02
Keams Canyon	860,031.78	1,608.83	786,239.46	1,379.37	522,992.46	917.53
Kayenta	1,634,850.15	1,717.28	1,383,989.34	1,453.77	938,101.34	985.40
Monument Valley	1,099,808.38	2,682.46	937,097.09	2,285.60	722,166.09	1,761.38
Peach Springs	184,785.87	1,274.39	184,785.87	1,274.39	115,535.89	796.80
Puerco	966,796.57	1,405.23	843,050.65	1,225.36	637,697.65	926.89
Sacaton	1,064,842.54	1,276.79	864,842.54	1,036.98	481,236.54	577.02
Tuba City Elem.	2,280,074.00	1,789.70	1,996,648.67	1,567.23	1,367,048.67	1,073.04
Tuba City H. S.	1,378,720.00	2,171.21	1,172,214.78	1,846.01	836,996.78	1,318.11
Window Rock	3,739,117.80	1,529.29	3,057,392.30	1,250.47	1,969,292.30	805.44

Table 36. Comparison of district revenue with and without JOM funds, and with and without all Federal funds by total amounts and per pupil for 18 Arizona school districts. Total revenue is actual total revenue excluding categorical Funds. Actual total revenue from district superintendents. Actual JOM revenues from Indian Desk of Arizona State Department of Education. Actual PL 874 revenues from DNA Legal Services, Window Rock, Arizona.

District	Total Revenues	Total Expenditures	Cash Balance 6-30-75
Chinle	$ 5,722,827	$ 6,367,178	$ (664,351)
Ganado	1,555,536	2,139,257	(583,721)
Puerco	966,796	780,021	186,775
Window Rock	3,739,118	3,587,090	152,028
Tuba City Elem.	2,280,074	2,360,728	(80,654)
Tuba City H. S.	1,378,720	2,516,448	(1,137,728)
Ft. Thomas Elem.	474,907	361,994	112,913
Ft. Thomas H. S.	252,727	213,542	39,185
Mesa Elem.	17,127,816	17,026,207	101,609
Mesa H. S.	9,573,540	9,668,286	(94,746)
Peach Springs	184,785	149,389	35,397
Kayenta	1,634,850	2,177,726	(542,876)
Keams Canyon	860,032	766,173	93,859
White River	1,520,207	1,385,575	134,632
Alchesay H. S.	669,349	591,339	78,010
Monument Valley H. S.	1,099,808	1,598,770	(498,962)
Indian Oasis	1,850,745	1,643,545	207,200
Sacaton	1,064,843	1,031,589	33,254

Table 37. Deficit spending in 7 Arizona districts. Deficit indicated by ( ) around cash balance. Total actual revenues and total expenditures exclude supplementary categories. From district and county superintendents.

District	PL 874	PL 815	JOM	ESEA I	ESEA III	ESEA VII	IEA IV	Other
White River	+	0	0	+	0	0	+	
Alchesay	+	0	+	+	0	0	+	
Chinle	+		+	+				II
Ft. Thomas Elem.	+	0	S +	+			+	II
Ft. Thomas H. S.	+	0	S +				+	II
Ganado	+	0	+	+		+	+	II
Indian Oasis	+		+					
Mesa Elem.	+		0				+	
Mesa H. S.	+		0				+	
Keams Canyon	+		+	+				
Kayenta	+		+	+		+	+	II
Monument Valley	+	+	+	+			+	II
Peach Springs	+		0 Supp					
Puerco	+	0	+	+			+	II
Sacaton	+	+	+	+	+	+	+	+
Tuba City Elem.	+		+	+			+	II
Tuba City H. S.	+		+					II
Window Rock	+		+	+		+	+	II +

Table 38. Receipt by school districts of funds from various Federal programs, for 18 Arizona districts. Presence of funds is indicated by +. For Johnson O'Malley, S indicates supplemental funding and b, basic. Under "Other," II represents ESEA, Title II funding. Information from district superintendents.

ALASKA

Until 1971, 97% of Alaska was nontaxable federal land. The 1971 Alaska Native Claims settlement set up 12 Native Corporations to whom the land was conveyed along with a cash settlement. However, taxation of the land was set aside for 20 years, so that Alaska still has little land to tax.

The State bears the major responsibility for financing education, through its public school foundation program. This program aims to provide all children in the State the same basic educational opportunities. It determines a basic level below which no district should fall, rather than placing a ceiling on the amount of aid a district can generate.

State aid is calculated by multiplying the Basic Need of a school district by an equalizing factor determined by a formula. The formula is such that a district never gets less than 90% of its basic need. The support required from the district ranges from .64% to 10%.

To compute the Basic Need one multiplies instructional units times a dollar allotment per unit. The dollar allotment is set annually; in 1975 it was $23,500. A district with an ADM of 10 might get two instructional units plus one vocational education unit and one special education unit. Depending upon their remoteness and inaccessibility, districts can receive more than 100% of the allotment per unit - say, 105 or 110%.

The percent (P) of a district's basic need that the state will provide is determined by this formula:

$$P = 1 - \left[(1 - K) \frac{V}{V_s} \right]$$

K is the level of State support of the basic need; in 1974, K was 90%; in 1975, 93%.

V is the district's assessed valuation divided by its ADM

V_s is the average assessed valuation divided by ADM for all districts of the State. (Valuation is at 100%).

In Alaska the nearest thing to ordinary school districts are the borough and city school districts. Jurisdictions in Alaska are complex, and tax levying authority depends upon the type of jurisdiction. Very briefly, Alaska contains Unorganized Boroughs with no power to levy taxes, and Organized Boroughs (or, just "Boroughs") which can levy taxes. Cutting across this distinction are the various classes of cities. The gist of the matter is that Boroughs and certain cities constitute school districts and can levy property taxes. Certain other cities can collect sales taxes, and 1/2% property tax if voted by referendum.

Several tax exemptions are allowed. The Senior Citizen is exempt from property tax; farm land is assessed lower. In both cases, the State reimburses the district for lost revenues. Oil and gas exploration, production, and pipeline transport are taxed by the State at 20 mill rate on full value. The State also levies a State severance tax of 60% and a royalty tax.

About 80-1/2% of the State's population live in the organized boroughs, another 12% in cities without organized boroughs, and the remaining 7-1/2% live in the unorganized area of the State. With an expanding population and economy, inflation, and annexation, assessed value of property has grown 315% in the past 10 years. In 1974, the Full Value Determination for the State's 32 borough and city school districts was nearly $5 billion dollars, of which the local assessed value constituted nearly 86%, or roughly $4,150,000,000, and the State assessed value was 14% or about $684 million. The value of oil-gas exploration, production, and transportation situated within unorganized boroughs was nearly $30 million in April, 1974. The average per capita valuation of organized boroughs in 1974 was $16,044; for city school districts it was $11,994; the State average per capita valuation was $13,587. Bond indebtedness for the 32 organized borough and city school districts has increased nearly 150% in the past 5 years. The average per capita debt of the districts was $1,070.

There have been two State school systems operating in Alaska. One corresponds to the system in most other States, where a State department of education supervises local-- in this case borough and city-- school districts. The other is the Alaska State Operated Schools System (ASOSS). ASOSS provides education services directly to the rural, unorganized area of the State. The legislature funds ASOSS directly, with no local support from ad valorem taxes. By the end of 1976 the two school systems will be merged. ASOSS is now being reorganized under the name Unorganized Borough Schools, whose Board of Directors will supervise the schools until new school districts become functional. These new districts will conform closely to the boundaries of the Native Corporations, will have local boards, and will be in place before the land becomes taxable.

In the unorganized boroughs are about 125 ASOSS schools. In 1973-74 there were 7,218 students in ASOSS rural schools, of whom

5,225, or 72% were Native. Anytime 10 children need a school it is established. The number may drop to eight before the school is abolished. Over 80 schools are one or two teacher schools with enrollments of 8 - 20 students. If less than eight children in a community need educating, they may take correspondence courses (500 students do this) or attend school outside their districts in BIA schools (636), or they may attend another school and board outside their community (796). These options are admittedly not very satisfactory. The correspondence courses are said to be minimally relevant and, additionally, take no account of Native language difficulties. The boarding situations often result in high dropout rates.

The ASOSS is funded now by the State's foundation program. The basic support formula is essentially the same as for the organized boroughs. The allotment for each instructional unit is $23,500 and may be increased up to about 33% by regional differentials based on remoteness. Revenues of the unorganized boroughs include 1) basic support revenue from the State, 2) transportation, 3) tuition, 4) dorm receipts, 5) Federal reimbursement for lunches and milk, 6) PL 313 Handicapped, and 7) miscellaneous receipts, for example, from selling electricity from a State generator to Public Health Service, Federal installations, and others in the community.

PL 874 money for ASOSS students goes to the State. The State then gives the schools an "in lieu of" support which administrators claim is more than the PL 874 entitlement. We could not document this claim. This support is pegged to the "average local support" of the organized borough and city school districts.. This "in lieu" money constitutes 75% of the funding for ASOSS.

The Organized Borough Schools and city school districts are supervised by the State Board of Education and financed under the foundation program. They support 67,393 children in K-12 of which 10,889, or 16%, are Natives. Of the 32 organized school districts, the largest is Anchorage at 35,449 ADM; the smallest is Pelican at 32 ADM. The State gives the district its PL 874 money directly and considers it in place of local taxes. If a child goes to a second district outside his own, the second district counts that child in its ADM with all the attendant implications. The first district then pays tuition of the difference between its own local effort and the second district's local effort.

In addition to district school and unorganized borough schools, another 7,092 children attend ASOSS On Base schools, 1,821 attend private and denominational schools, and 5,342 attend BIA schools. Generally, the State does not duplicate the BIA efforts in an area. If the BIA has a high school, the State will provide only an elementary school. Many villages opt for BIA schools because they have higher budgets for support positions such as cooks, janitors, etc. which bring more jobs and money to the school area. Other than attempting to prevent duplication of facilities and directing the applications of students to the most convenient school, State and BIA schools tend not to cooperate with each other's programs or to mesh services.

It is difficult to assess comparatively the several types of schools. According to an "index of satisfaction" given in the 2(C) Report, parents were more satisfied with ASOSS elementary schools than with city or borough elementary schools, but at the high school level, parents were more satisfied with BIA schools, than with ASOSS schools, and least so with city and borough schools. Comparing per cent of seniors who graduated among the different systems in 1973-74, in the district schools 6% graduated, in private and denominational schools 5%, in ASOSS, 3%, and in BIA, 2%.

Transportation is 100% reimbursed. Most public school children are located on roads or are in small bush schools which do not transport.

Salaries are computed by adding some rural incentives for remoteness to the State teacher salaries of up to 10% of the basic salary level.

Construction costs are borne by the State with foundation program money. There have been some construction sites in ASOSS using PL 815, and almost all military base schools were built with PL 815 money up to 10 years ago. However, there has been no PL 815 money to aid in the changeover from ASOSS to new district schools.

When dorms are used in public schools, the State Department of Education contracts with parties to house students. This is a change from several years ago when JOM money was used to pay the cost of the "boarding home" program. Native students from villages with no high school were brought into larger Alaska cities and boarded with local families. In 1973, the BIA created a statewide JOM Program Review Committee in order to move towards greater native control and less State administration. The Committee, consisting of one member from each corporation, regarded the boarding of students as a basic cost, not a supplemental program. Consequently, JOM could no longer be used for that purpose.

In 1974-75 the Alaskan Federation of Natives (AFN) administered 99% of JOM and used it for bilingual-bicultural heritage programs, for counseling, for supplementary education programs, including journalism, drama, foreign travel, language, and culture, community education, and for supportive services. JOM served 7,706 students in 33 projects for a total 4,510,000 or $585 per student. In fiscal year 1975, 120 proposals were submitted, for $11 million. Obviously, not all can be funded at present levels, but it is hoped that the smaller communities will share in some of the programs. In handling JOM allocations, the districts apply to AFN which ranks the proposals. The BIA decides the total amount of money available, and the AFN makes the final awards.

In 1974, over $30,000,000 of PL 874 funds came into the State. ASOSS received $25,542,199 at the preferential rate of 100% average cost per students, or $2,667.70 per student. The local school districts receive 50% of the average statewide cost per student. Preferential rates are given Alaska because of the unusual amount of Federal land in the districts. The possible loss of the preferential PL 874 rate over the next three years is a great problem. The U. S. Commissioner granted the preferential rate, and he can decide to cut it back. Now that the new tax prospects are appearing in Alaska, there is a move to decrease the PL 874 rates, even though the Native lands will not be fully taxable for 20 years. According to the 2(C) report, "Receiving PL 874 funds at a preferential rate in the State Operated School System has relieved Alaska of a large proportion of its school financing burden, and has permitted lower taxation in the State."

Title I, ESEA is the largest categorical program in the State. It was funded at $5,354,022 in fiscal year 1975. The programs are administered by the State and by the BIA. In 1974, 2,247 students were served in BIA schools while 4,926 were served in public schools. 494 eligible students were not served in public schools while 3,011 eligible students were not included in programming in BIA schools. Funding is based on the number of eligible students in a district. The U. S. Office of Education determines how much money goes to the department of education. Often, Congressional allocation of the money occurs after the program is underway, causing the schools to use their own operational money until the funds are available. These funds may be held up until February or March of the year of programming. Fortunately, the State does have extra money for loans since they get a quarterly advance from USOE. Since the exact amount of money granted is not known until late in the year, programs are often not utilized fully. Regulations stipulate that funding will not be less than 85% nor greater than 120% of last year's budgeting. Even so, the range is large enough to inhibit planning of a full program. Most Title I programs stress communication skills and language development. A few offer career development or cultural preservation, but these are not common.

Any student who is within two generations of a recognized Alaskan native is eligible for Indian Education Act (Title IV) aid. About 60,000 students are eligible in Alaska for either Part A or B of Title IV. In 1974-75, the money available was programmed among the regions in fair proportion to actual numbers of students. 1974 showed a high grant to the North Slope Borough which raised questions of whether the money was used to organize that borough from the previously unorganized Arctic Slope area. Types of Title IV programs included land claims classes, cultural heritage classes, counseling, and bilingual-bicultural classes. Nevertheless, State officials complain that more State discretion is needed in Title IV regulations on the grounds that United States central policymaking cannot allow for regional differences. The State also complains of duplication among Title IV and other programs, although the 2(C) Report suggests that coordination among Federal programs is occurring.

We continue to hear charges of ill-feeling or reverse discrimination in Indian Programs. Sometimes, nonminority students are allowed to participate if parent committees don't object. But that is obviously a temporary measure. Other possible remedies would be time-release or after-hour programs rather than in-school programs. Weaknesses in those approaches are loss of basic education time and transportation problems.

Implications Of The Alaska State Plan

The State of Alaska has assumed the responsibility for providing 93% of the basic need to schools at a classroom level of 10 students. They have assumed the responsibility to educate all students who live in Alaska, non-native and native children alike. This is a major change of responsibility from the traditional view that the Federal Government is responsible for financing the education of native populations. This acceptance of responsibility is dramatic in a State with large numbers of natives, parallel BIA school services, and strong native organizations when States with lesser problems seem to shrink away from the same conclusions.

Alaska has de-emphasized property tax as a source of revenue, mainly because so little of the land has been taxable. Rather, the major burden of providing State funds is on revenues from oil and gas exploration, production, and transport, and to huge severance taxes of 60%. Local revenues still come from property taxes when possible, but the lack of taxable land does not deprive an area of full voice. The payment of PL 874 funds is recognized as an equal substitute for taxes when entitlement to basic education is discussed. Several things should be recognized in this discussion. Over the next 20 years, PL 874 revenue will undoubtedly decrease as more native lands become taxable. At the same time, more income will be generated by severance taxes. NEA-Alaska estimates that $4 billion from severance tax alone will flow into education coffers by 1985.

In assuming responsibility for the education of all children in Alaska, the State has had to recognize numerous problems of sparsity, transportation, maintenance of plants, and teacher housing. They have met these problems on a State level, giving greater local control to the districts which can raise some local contributions. The lack of alternatives has determined the type of educational administrative structures used. They have solved major transportation problems by decentralizing schools (but not control) so that they can cope with "bush" conditions of few students per village cluster. However, they have then had to face teacher housing shortages in isolated villages. The State assumes these costs because no one else can. Rural schools have no taxing ability and the State cannot hire teachers unless housing is guaranteed. Weather-induced isolation requires small schools in villages cut off from large towns. Massive boarding of students became unrealistic in terms of human problems and financing. Most of all, a spirit of cooperation between Natives and non-Natives still exists, in spite of numerous disagreements, court fights, and continuing battles for control. We detected relatively little animosity between State offices and Native populations.

Major foreseeable problems include the siphoning off of expert Native people by the Native Corporations or by pipeline jobs, leading to fewer Indian leaders in public education. This is part of a continuing problem, namely, that educated people leave rural areas for better paying jobs elsewhere. Also, as income levels of Natives increase, Federal program money such as ESEA Title I may substantially decrease before Native school achievement levels are brought up to par. Such gaps between rising economic fortunes and rising educational fortunes call for some kind of institutional response. For Natives, taxation in 20 years may lead to a disruption of life patterns if land loss is significant. As more land becomes taxable, fewer schools will get more than 93% State aid, shifting more weight to the ad valorem taxes, and perhaps carrying back to the Natives the power of taxpayers to make the decisions. The interim period may be made more difficult if PL 874 revenue is substantially decreased before tax revenue from minerals exploration and the local property tax increases.

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SCHOOL	Elementary *	Secondary *	Ungraded *	Grand Total *	High School Graduates *	Caucasian Elementary	Caucasian High School	Other Elementary	Other High School	Final Enrollment
Anchorage	1,329	930	289	2,548	79	16,231	13,783	1,055	1,022	24,954
Bristol Bay	65	86		151	7	54	57			262
Cordova	91	61		152	11	202	148	8	8	515
Craig	53	47		100	12	43	24			167
Dillingham	163	171	2	336	25	29	31	1		397
Fairbanks	607	316	9	932	20	3,718	2,070	312	170	8,182
Galena	68	60		127	9	8	5			140
Haines	27	50	26	103	6	225	165			493
Hoonah	138	104		242	4	18	16			276
Hydaburg	49	20		69		6				75
Juneau	474	279	90	843	34	1,869	1,466	49	65	4,295
Kake	37	00	42	133	7	27	13			179
Kenai	347	264		601	47	2,174	1,681	35	33	4,524
Ketchikan	175	249	189	613	26	1,063	1,071	45	30	2,822
King Cove	66	42		108	1	3	3			114
Klawock	8		60	68		5				73
Kodiak	418	240		658	34	851	607	59	14	2,165
Matanuska-Susitna	114	57		171	13	1,601	687	27	11	2,497
Nenana	34	31	11	78	6	82	35	1	3	177
Nome	409	182	30	620	27	132	54	1		817
North Slope	108	251		419		3	6			428
Pelican	13	10		23		24	6	1		54
Petersburg	133	25		158	4	377	129	7	1	673
St. Mary's	81	51		132		1				133
Selawik	91	101		102	8	2				194
Sitka	299	334		633		486	555	35	12	1,721
Skagway	7	4		11		91	89			191
Unalaska	29	35		64	3	21	14	2	2	103
Valdez	20	12	19	80	1	140	118		1	348
Wrangell	100	104		210	6	223	180	3	7	623
Yakutat	47	28	2	77	5	43	32	2		164
Dillingham Foreign Studies		100	3	103			4			107
TOTALS	5,674	4,294	811	10,779	484	29,732	23,964	1,639	1,290	[illegible]

Table 39. District schools enrollment by Ethnic Group for 1973-74. Reproduced from Annual Statistical Report 1973-74, Alaska Department of Education, January, 1975.

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District	Administration	Instruction	Auxiliary Services	Pupil Transportation	Operation of Plant	Maintenance of Plant	Charges	Capital Outlay	Debt Service	Total Exclusive of C/O & D/S	AOM	per Pupil in AOM
Anchorage	$ 1,940,517	$ 34,912,441	$ 3,339,043	$ 2,743,549	$ 5,501,309	$ 2,010,568	$ 5,157,546	$ 742,128	$ 10,824,564	$ 56,264,993	35,085	$ 1,577
Bristol Bay	53,400	395,055	24,910	58,250	85,000	21,000	42,100			680,615	250	2,722
Cordova	56,052	589,654	25,050	12,000	83,400	32,512	61,900	15,500	20,000	860,578	492	1,749
Craig	45,500	237,032	10,000	17,280	32,500	8,800	19,560			370,672	176	2,109
Dillingham	85,27[illegible]	460,515	10,300	36,000	92,200	20,000	82,451	160,000		766,740	400	1,017
Fairbanks	403,01[illegible]	8,104,475	127,030	1,126,603	1,750,107	449,612	1,260,498	251,880	1,003,400	13,211,336	8,357	1,581
Galena	21,500	291,000	31,200	9,600	57,550	20,800	24,250			456,800	150	3,045
Haines	42,430	604,255	7,500	43,000	94,635	15,600	53,991	35,177		861,311	516	1,669
Hoonah	49,240	465,897	12,500	800	43,900	23,296	50,200	8,000	43,000	645,833	270	2,392
Hydaburg	8,904	117,594	1,400		20,708	8,000	10,019			166,625	67	2,487
Juneau	336,994	4,039,465	470,044	315,050	642,947	334,608	414,971	53,327		6,554,099	4,362	1,503
Kake	44,300	252,470	25,546	10,000	49,500	5,400	29,000	6,300		417,216	186	2,243
Kenai	264,848	5,366,619	225,402	73[illegible],047	897,728	80,559	503,701	137,406		8,172,944	4,670	1,750
Ketchikan	146,441	3,015,853	86,480	242,075	362,301	156,196	311,031	171,490		4,319,377	2,863	1,509
King Cove	26,861	120,980	10,900		26,979	10,250	24,514	14,500		220,484	113	1,951
Klawock	28,500	80,650	5,050		9,500	1,850	4,760	22,000		130,310	81	1,609
Kodiak	118,377	2,800,667	233,384	84,875	331,046	164,826	277,570	16,541	87,562	4,010,545	2,307	1,738
Mat Su	136,496	3,027,368	263,019	465,090	519,730	171,703	384,001	156,362		4,967,416	2,53[illegible]	1,963
Nenana	58,271	283,429	6,800	49,028	50,000	28,800	43,600	19,500		519,928	17[illegible]	3,023
Nome	99,448	594,429	49,900	40,300	182,086	32,680	57,900	7,153		1,035,745	8[illegible]4	1,153
North Slope	134,000	479,827	600		143,334	83,268	93,395	40,000		884,424	4[illegible]3	1,910
Pelican	13,700	91,300	4,800		18,900	6,000	16,400	5,000		151,[illegible]00	51	2,963
Petersburg	60,997	822,151	37,763	33,379	77,053	16,804	73,414	10,371		1,121,561	650	1,725
Sitka	91,280	1,913,611	55,794	89,900	249,711	99,556	224,062	10,775		2,723,914	1,795	1,517
Skagway	40,925	266,800	7,475		28,000	8,400	21,900	10,000		373,500	180	1,976
St. Mary's	48,199	186,692	28,550		5,750	2,136	55,494	10,066		326,821	137	2,386
Unalaska	35,000	230,000	14,400	9,000	45,000	13,200	20,100	10,000		266,700	118	3,108
Valdez	54,363	483,224	7,600	21,792	64,221	40,254	45,714	21,385		717,160	318	2,255
Wrangell	52,250	740,368	12,400	27,850	66,550	46,100	74,300	7,780		1,019,518	635	1,605
Yakutat	50,800	200,979	13,000	12,500	39,540	17,830	25,600			360,149	142	2,636
TOTALS	$ 4,546,878	$ 71,125,730	$ 5,147,840	$ 6,181,768	$ 11,652,034	$ 4,590,568	$ 9,433,842	$ 1,941,661	$ 11,978,526	$ 112,678,720	60,040	$ 1,632

Table 40. District Schools Estimated Expenditures 1973-74.
Reproduced from Annual Statistical Report 1973-74,
Alaska Department of Education, January, 1975.

SCHOOL	LOCAL	%	STATE	%	FEDERAL	%	TOTAL
Anchorage	$ 13,366,992	23.4	$ 43,179,597	75.8	$ 451,532	0.8	$ 57,097,121
Bristol Bay	105,355	15.6	550,290	80.8	25,000	3.7	630,645
Cordova	93,000	10.8	768,450	89.1	1,100	0.1	862,550
Craig	10,000	2.7	347,280	95.3	7,000	1.9	364,280
Dillingham	150,000	15.6	764,939	74.6	101,000	8.8	1,025,830
Fairbanks	2,561,669	16.5	12,389,665	79.7	586,969	3.8	15,537,892
Galena			395,886	80.8	94,000	19.2	489,886
Haines	201,725	23.0	669,309	76.3	6,000	0.7	877,038
Hoonah	4,775	0.7	530,420	77.0	153,100	22.3	688,295
Hydaburg	2,000	1.3	148,484	93.9	7,600	4.8	158,084
Juneau	906,000	13.9	5,593,626	86.0	7,800	0.1	6,507,426
Kake	13,500	3.2	397,216	93.8	12,800	3.0	423,516
Kenai	1,397,500	16.9	6,792,654	82.1	85,000	1.0	8,275,154
Ketchikan	977,732	21.3	3,617,805	78.7			4,595,537
King Cove	18,000	7.8	209,054	90.9	2,930	1.3	229,984
Klawock	6,400	4.5	119,094	84.2	16,000	11.3	141,494
Kodiak	297,500	7.4	3,729,677	92.6			4,027,086
Matanuska-Susitna	1,017,022	20.0	4,022,725	79.3	33,261	0.7	5,073,008
Nenana	16,000	3.1	497,158	96.2	3,700	0.7	516,858
Nome	77,857	7.5	915,773	87.8	49,266	4.7	1,042,896
North Slope	236,500	23.1	787,924	76.9			1,024,424
Pelican	6,013	4.0	143,721	95.7	500	0.3	150,234
Petersburg	141,780	12.5	970,125	85.5	22,500	2.0	1,134,405
Sitka	323,953	11.6	2,280,350	31.6	191,685	6.8	2,799,989
Skagway	52,329	13.6	331,175	86.4			383,500
St. Mary's	14,166	4.2	213,214	63.2	109,967	32.6	337,347
Unalaska	72,378	19.2	294,622	77.9	11,000	2.9	378,000
Valdez	76,405	10.2	661,107	88.3	11,495	1.5	749,007
Wrangell	68,000	6.8	925,800	93.2			993,800
Yakutat			362,430	98.1	7,000	1.9	369,430
TOTALS	$ 22,223,460	19.0	$ 82,609,470	79.3	$ 2,007,795	1.7	$ 116,840,725

Table 41. District Schools Source of Revenue - Estimated, 1973-74. Reproduced from Annual Statistical Report 1973-74, Alaska Department of Education, January, 1975.

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SCHOOLS	Title I, ESEA	Title I, ESEA Handicapped	Title II, ESEA Library Association	Title III Innovative	Title III Mini-Grants	Title VI, ESEA	Title VI Mini-Grants
Anchorage	$ 582,112.16	$ 43,743.00	$	$ 60,495.00	$	$ 67,921.37	$ 3,383.44
Bristol Bay	4,797.00		630.00				1,000.00
Cordova	13,420.00		1,066.00		1,000.00		
Craig	2,400.00		4,489.00	27,000.00			
Dillingham	28,545.50			100,000.00	2,988.00		1,493.86
Fairbanks	202,581.16			4,390.00	3,078.94	18,864.00	6,892.46
Galena			500.00		1,075.00		
Haines	9,311.13		10,800.00		2,300.00		
Hoonah	11,000.00		869.00				800.00
Hydaburg							
Juneau	73,420.80		4,059.00	68,000.00	2,224.00	6,041.34	1,021.00
Kake					2,500.00		
Kenai	104,635.71		3,599.00	40,550.00	2,885.00		814.00
Ketchikan	67,670.73		2,193.00		9,653.00		565.00
King Cove							
Klawock							
Kodiak	50,647.00				7,410.00		285.00
Mat-Su	243,246.14		7,429.00	20,577.93	1,000.00		2,062.60
Nenana	5,064.00						
Nome	66,339.98		13,251.00		1,000.00		
Pelican			568.00				
Petersburg	18,923.07						1,060.00
Selawik							
Sitka	11,644.85		2,193.00		4,942.85		
Skagway							926.50
St. Mary's	96,287.00		1,432.00				
Unalaska					960.00		950.00
Valdez	8,479.00	34,343.00	1,617.00				1,000.00
Wrangell	7,370.00				979.00		290.00
Yakutat	7,438.79		3,987.00	19,025.00			1,000.00
S. O. S.	883,174.49	993,891.00		17,366.00	18,485.00		4,459.78
U. of A.						44,874.00	6,000.00
TOTALS	1,815,394.51	1,074,777.00	58,532.00	347,403.93	62,479.79	137,700.71	33,929.13

Table 42. Federal Programs Approved Projects Fiscal Year 1973-74. Reproduced from Annual Statistical Report 1973-74, Alaska Department of Education, January, 1975.

NEW MEXICO

In the past 25 years, New Mexico has moved from 431 independent school districts to 88 consolidated districts. It is policy in New Mexico that consolidated districts can operate less expensively and more efficiently than numerous small independent districts. With New Mexico's combination of scarce roads and consolidated districts, some districts have purchased their own road graders to keep the school buses coming in during the winter.

New Mexico derives nearly half (47.5%) of its total revenues from a sales and compensating tax, 20.1% from the State income tax, 4.4% from luxury tax and 3% from property tax. The remaining 12.5% comes from all other sources. The State in turn allocates just over half (54.2%) of its funds to public schools, 16.8% to higher education, 2.1% to such other education items as vocational and special education facilities, 13.3% to health, hospitals and welfare; and 13.5% to legislative, judicial, and general governmental costs.[1] Comparing its public school revenues with personal income, the State ranks high in effort.[2] In 1974-75 New Mexico was third from the bottom in the nation in local (tax) effort; at the same time it ranked high--fourth in the nation--with State contributions at 64.5%.[3] In New Mexico, it appears, the State rather than the locale makes the effort.

The present State plan for financing education makes it clear that the State indeed assumes the majority of the financial burden for education. The plan operates with a "State equalization guarantee," plus State supplied monies for the total cost for transportation, textbooks and certain other ear-marked expenses. In implementing the plan's formula, the State "takes credit" for 95% of certain local revenues, namely local district tax levies, plus 35% and Motor Vehicle Department fees, Federal forest reserve funds, regular vocational funds, and PL 874 monies. The legislature annually sets a "cost per unit" for funding purposes; for 1974-75 the rate was $616.50 per unit; for 1975-76 it is $703.00. The fixed cost per unit is multiplied by a number of "program units." The number of program units assigned to a district depends upon differential weightings attached to different kinds or programs; for example, grades 1 - 3, 7 - 9, 10 - 12 are weighted more leanly than 4 - 6. Likewise there are weightings for special education, vocational education, bilingual education, sparsity (as defined by size of school), and training and experience of staff.

While the State guarantees that 80% of any district's need will be met, the State's dollar contribution varies widely depending on how much local and PL 874 revenue the State can take credit for. Table 43 presents the percent of revenue contributed by State, local, and PL 874 for the nine New Mexico districts investigated.

The especially low state contributions in the cases of Dulce and Kirtland Central (27.1% and 37.5%, respectively) are related to the presence of extraordinarily large cash reserves. Those two districts are using their cash reserves until the amount in reserve falls below the five percent of budget allowed by State law; Bloomfield's and Gallup's (the other formerly "rich" districts studied) reserves have already been so reduced. The large reserves were accumulated under the preceding State finance plan which did not take credit for PL 874 funds.

In 1974-75 the national average expenditure per public school pupil was $1,245. The nine New Mexico districts studied ranged from $300 below to $400 above this amount. The variation in expenditures per pupil was inversely related to the percent of contribution made by the State. Dulce with the lowest State contribution had the highest per pupil expenditure; Albuquerque presented the opposite case. In part this relationship reflects the State's philosophy that the larger the district, the more efficient. Albuquerque has the largest enrollment of any district in the State, six times the size of Gallup-McKinley and more than 20 times the size of Dulce.

At the same time there did not seem to be any systematic relationship between amount of expenditures per pupil and enrollment of Indian students. Dulce's enrollment was 88% Indian; its expenses came to $1,664 per pupil. Kirtland Central's enrollment was 84% Indian; it spent $1,282 per pupil, or approximately the national average. Bernalillo and Cuba districts had Indian enrollments at roughly half the total enrollment, yet Bernalillo spent $1,109 per pupil, and Cuba, $1,318. Jemez Mountain, with only 24% Indian enrollment spent $1,530 per pupil, or almost as much as Dulce. These figures suggest that the State plan does not discriminate in favor or against Indian districts.

From the standpoint of State contribution, Gallup was at the median among these nine districts at 57.3%, and closely comparable to Cuba and Bernalillo in that respect. Gallup spent $1,003 per pupil, less than either of those two districts. The authors of An Even Chance painted Gallup as the hell of Indian education. The Navajo Division of Education praises the Gallup system for being more responsive than local districts in Arizona. In any case, investigators for this study heard complaints, not so much about Gallup, as from Gallup officials--complaints about inadequate financing, especially on the part of the State.

Gallup-McKinley school district officials complain for example, of inadequate funding for their outsized transportation costs. While it is clear that Gallup faces a large transportation task, there was no evidence of the district's being shortchanged for transportation.

Table 44 presents transportation data for 1973-74 for the nine New Mexico districts studied.

What was clear from the transportation statistics was that nearly all the New Mexico districts transported large percentages of their student populations long distances. The low figures for Albuquerque and Dulce reflect the comparative consolidation of their student populations. High costs in Jemez Mountain and Cuba on the other hand are related to large numbers of miles traveled, and high percentages of students riding the buses.

In 1974-75 PL 874 revenues ranged from 3.7% of the total district budget in Albuquerque to 25.2% of the budget in Kirtland Central. (See Table 43.) The fact that the State takes credit for 95% of the PL 874 funds received by a district implies that the State views those funds as revenue "in lieu of taxes," rather than merely as impact aid. Of the various methods for computing a district's PL 874 revenues--national or State average per student cost for two years previous, or cost per student in five comparable districts--New Mexico districts by State policy all use the "national average" method, even though the "comparable districts" method can yield more dollars. Since the State takes credit for the revenues, however computed, an individual district would gain little from boosting its

PL 874 receipts.

State law limits local tax levies for schools to 8.925 mills, plus a local 2 mill option for capital outlay. Seven of the nine districts studied were at their maximum millage rate. Even if such a district had the will and the capacity to increase the mill levy, it would be prevented by law from doing so.

The State educational finance plan provides for weighting of program units according to a sparsity factor. A single school with less than 200 pupils attending, or a district with less than 4,000 pupils, qualifies for the sparsity weighting. Oddly, Albuquerque--the largest district in the State--has one school that qualifies under this definition. A district with a demonstrably high number of schools minimally over the sparsity index (the "201-pupil school" concept) could have the game of sparsity without the name. Gallup with over 13,000 enrollment could not qualify at the district level for sparsity weighting, yet Gallup is the largest school district in the country in the area. Nor does Gallup qualify at the level of single schools. In that the sparsity index does not distinguish high schools from elementary, Gallup with small high schools might be hurting. However, it could not be documented that Gallup was in fact victimized by the sparsity provisions of the New Mexico plan.

While the State plan provides program unit weighting for education and experience of teachers, several of the nine districts had relatively few teachers that qualified for the extra weighting. The State average of years of teaching experience is 10.1 years. Only Taos and Bernalillo exceeded the State average with 13 years and 10.5 years respectively. Remoteness of the district seems to be a factor. Among the more remote districts, Jemez Mountain had teachers with an average of 4.1 years' experience, lowest in the State. For Dulce the figure was 6.5 years; for Cuba, 8.9 years. While Gallup-McKinley district includes an urban area, it also has a number of quite remote small schools on the Navajo and Zuni reservations; the average number of years of teaching experience in Gallup was 6.2

The data on teacher training presented a similar pattern. For the State, 31.7% of instructional staff have Master's degrees or higher. Albuquerque, at 33.1% was the only district of the nine studied that exceeded the State average. For Jemez Mountain the corresponding figure was 8.8% of staff. The other seven districts studied ranged from 20 to 30%. Assuming for the sake of argument that staff experience and training are beneficial to students, the data indicate that the corresponding weightings are not adequate to maintain an experienced staff in conditions of relative isolation. An inexperienced staff brings less State equalization dollars; less dollars cannot pay an experienced staff. A way out of this cycle might be to offer incentive pay for teaching in isolated areas.

In the Cuba district, Indian students have a choice of attending the public schools, one of the mission schools, or one of the BIA boarding schools. Many students change schools three to five times during the school year. They may start the year in a BIA school and in November transfer into one of the Cuba schools. As the weather gets colder and the mornings darker, they transfer again, this time to one of the mission schools closer to home. This practice makes it difficult if not impossible to provide any continuity of program for these students. According to the district superintendent, 400 students were identified in the Spring of 1974 to participate in a a particular reading program during 1974-75. In September 1974 there were 400 students ready for the program, but only 100 of them were the same students that had been identified in the Spring.

New Mexico has no practice analogous to the Arizona one of charging tuition for each student attending school 'out of district". A student in New Mexico, once added to the rolls of a particular school district, is considered a student of that district, and is funded at the same level as any other student. The Cuba district offers a case in point: Students from Pueblo Pintado are within the Gallup-McKinley district. Yet, at parental request, the Cuba district has become "their" district. The Cuba district sends its buses out to transport the students some 50 miles into the Cuba schools.

Two issues were raised by superintendents that relate to the cultural and linguistic minority status of Indians. One was under-representation of Indians among the professional staff. In some districts Indian classroom aides take coursework leading to their certification as teachers. One district complained that aides so trained were then siphoned off to the BIA schools, with whose higher salaries the district could not compete. The other issue arises from the fact that in some Indian districts in New Mexico, Chicanos are an important minority--or actually enjoy majority status, including control over the school system. Where the student population is overwhelmingly Indian, or where it has very few Indians, there seems to be less of a struggle over the allocation of resources than where the district has roughly equal numbers of Indians and Chicanos.

The clear limits placed on educational finance from the State level in New Mexico tend to cool down the issue of local taxation as a source of public school funds. The amount of State control, in the effect, also dilutes the impact of any tribal self-determination in education in this State.

Notes to New Mexico Report

1. New Mexico Statistics 1974-75, Public School Finance Division, Department of Finance and Administration, Santa Fe, 1975, p. C-18.
2. Rankings of the State, 1975, National Education Association, Table I-12--Total Current Expenditures for Public Elementary and Secondary Schools in 1973-74 as Percent of Personal Income in 1973.
3. Rankings, Table G-6--Estimated Percent of Revenue for Public Elementary and Secondary Schools from Local Governments, 1974-75, and Table G-8--Estimated Percent of Revenue for Public Elementary and Secondary Schools from State Governments, 1974-75.

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI
District	Total Revenue	Revenue from State	Revenue from State as Percent of Total Revenue	Revenue from State Per Pupil	Local Revenue	Local Revenue as Percent of Total Revenue	Local Revenue per Pupil	State Aid Dollars Generated for each Dollar of Local Aid	PL 874 Revenue	PL 874 Revenue as Percent of Total Revenue	PL 874 Revenue per Eligible Pupil
Albuquerque	$ 76,397,219	$ 61,199,538	80.1	$ 724.81	$ 8,884.767	11.6	$ 105.23	6.89	$2,805,567	3.7	$ 365.17
Bernalillo	3,224,298	1,874,404	58.1	645.18	148.635	4.6	51.15	12.61	554,561	17.2	452.15
Bloomfield	2,590,381	1,237,083	47.8	538.47	748.057	28.9	325.38	1.62	344,542	13.3	419.15
Cuba	1,351,579	783,157	57.9	745.06	98,189	7.3	95.79	7.98	283,189	21.0	425.21
Dulce	1,088,821	295,611	27.1	449.26	185,928	17.1	282.57	1.59	261,518	24.0	424.20
Gallup	13,315,265	7,631,609	57.3	575.10	883,552	6.6	66.58	8.64	2,847,643	21.4	328.47
Jamez Mtn.	929,292	514,230	55.3	847.17	292,411	31.5	481.73	1.76	62,522	6.7	343.53
Kirtland Ctrl.	7,076,752	2,651,794	37.5	480.75	1,422,236	20.1	257.84	1.86	1,781,248	25.2	382.04
Taos	3,169,243	2,526,025	79.7	768.72	177,352	5.6	53.97	14.24	67,921	2.1	341.31

Table 43 1974-75 Total, State, local and PL 874 Revenues Compared for School Districts Studied in New Mexico. Total revenues are actual total revenues excluding categorical funds

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	No. of Students Transported	Percent of 40 day ADM Transported	Total No. of Miles	Average No. of Miles Transported per Student	Average No. of Students per Bus	Average Cost per Student
Albuquerque	30,196	37	2,399,760	79.5	113	$ 58
Bernalillo	2,318	76	196,560	84.8	66	75
Bloomfield	2,176	89	167,940	209.4	64	112
Cuba	912	71	260,784	286.0	38	172
Dulce	341	58	21,132	62.0	85	53
Gallup	7,374	57	815,760	110.6	70	79
Jemez Mtn.	659	96	171,306	260.0	35	168
Kirtland	3,480	67	293,634	84.4	89	66
Taos	2,059	64	148,482	72.1	93	61

Table 44 Transportation Statistics for nine New Mexico School districts in 1973-74. From New Mexico Statistics, 1973-74, Public School Finance Division, Department of Finance and Administration, Santa Fe, 1974 and from final monthly budget reports for 1974-75 from each school district.

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District	Total assessed valuation	Assessed valuation per pupil	Tax Rate	Expenditures per pupil
Albuquerque	$ 815,597,393	$ 9,881.12	.010950 mills	$ 904.81
Bernalillo	13,073,808	4,448.39	.011150	1,109.53
Bloomfield	60,098,832	26,722.47	.011150	1,126.74
Cuba	7,502,597	7,044.69	.011150	1,318.61
Dulce	17,225,039	30,486.79	.011150	1,654.74
Gallup	79,739,466	6,326.02	.011150	1,003.41
Jemez Mtn.	24,930,147	38,177.87	.011150	1,530.96
Kirtland Ctrl.	148,026,703	27,498,92	.08925	1,282.95
Taos	16,530,000	5,009.09	.011150	964.47

Table 45 1974-74 total assessed valuation, assessed valuation per pupil, tax rates, and expenditures per pupil for districts studied in New Mexico

District	Bonding Capacity	Bond encumbrance	Encumbrance as per cent of capacity
Albuquerque	$ 48,935,844	$ 30,100,000	61.5
Bernalillo	1,004,400	784,428	128.0
Bloomfield	3,605,930	2,970,000	82.4
Cuba	450,155	84,000	18.7
Dulce	1,033,502	600,000	58.1
Gallup	4,784,368	2,302,000	48.1
Jemez Mtn.	1,493,631	520,000	34.8
Kirtland Ctrl.	8,881,602	405,000	4.6
Taos	991,800	690,000	69.6

Table 46. Bonding capacity and encumbrance compared for nine New Mexico school districts. Data, except for Taos, from State Department of Education as of December, 1974.

District	Total expenditures in 1974-75	Expenditures per pupil	Expenditures per pupil as percent of Average for State in 1973-74
Albuquerque	$ 76,397,219	$ 904.81	87
Bernalillo	3,224,298	1,109.53	107
Bloomfield	2,590,381	1,126.74	109
Cuba	1,351,579	1,318.61	127
Dulce	1,088,821	1,654.74	160
Gallup	13,315,265	1,003.41	97
Jemez Mtn	929,292	1,530.96	148
Kirtland Ctrl.	7,076,752	1,282.95	124
Taos	3,169,243	964.47	93

Table 47. Total expenditures in 1974-75, expenditures per pupil, and expenditures per pupil as percent of statewide average expenditure per pupil in 1973-74, for nine New Mexico school districts. Total expenditures are actual total.

District	Total district revenue	Revenue per pupil	Revenue excluding all Federal aid	Revenue excluding all Federal aid, per pupil
Albuquerque	$ 76,397,219	$ 904.81	$ 73,591,652	$ 871.58
Bernalillo	3,224,298	1,109.91	2,669.737	919.01
Bloomfield	2,590,381	1,127.72	2,245,839	977.73
Cuba	1,351,579	1,287.22	1,068,390	1,017.51
Dulce	1,088,821	1,654.74	827,303	1,257.30
Gallup	13,315,265	1,003.41	10,467.622	788.82
Jemez Mtn.	929,292	1,530.96	866,770	1,427.96
Kirtland Ctrl.	7,076,752	1,282.95	5,295,504	960.03
Taos	3,169,243	964.47	3,101,322	943.80

Table 48. Comparison of district revenue with and without Federal aid, by total amounts, and per pupil, for nine New Mexico school districts. Total revenue is actual total revenue excluding categorical funds. From the New Mexico State Department of Education Statistics.

District	PL 874	PL 815	JOM	ESEA I	ESEA III	ESEA VII	IEA IV	Other
Albuquerque	+	0	+	+	+	+	+	+
Bernalillo	+	0	+	+	+		+	+
Bloomfield	+	0	+	+	+	+	+	+
Cuba	+	0	+	+			+	+
Dulce	+	0	+	+				
Gallup	+	+	+	+		+	+	+
Jemez Mtn.	+	0	+	+				+
Kirtland Ctrl.	+	0	+	+			+	
Taos	+	0	+	+		+	+	+

Table 49. Receipt by school districts of funds from various Federal programs, for nine New Mexico districts. Presence of funds is indicated by +.

District	Total Enrollment	Indian Enrollment	Indian Enrollment as percent of total	Tribes
Albuquerque	84,435	1,926	2%	Isleta Pueblo, Canoncito (Navajo)
Bernalillo	2,906	1,320	45%	Various pueblos
Bloomfield	2,299	714	31%	Navajo
Cuba	1,025	543	51%	Navajo
Dulce	658	582	88%	Jicarilla Apache
Gallup	13,270	8,942	67%	Navajo, Zuni
Jemez Mtn.	607	146	24%	Navajo
Kirtland Ctr.	5,516	4,611	84%	Navajo
Taos	3,286	153	5%	Taos Pueblo

Table 50. Total enrollment and Indian enrollment of districts studied in New Mexico.

OREGON

Oregon's contribution to local education efforts depends upon each district's ability to provide a basic education program as that is defined in Oregon statutes. Assistance to local districts is paid out of five accounts:

Transportation
Equalization
Flat Grants
Growth
Decline in Enrollment.

Flat grants constitute the largest payment to districts and are computed from a district's net operating costs per weighted average daily membership. The ceiling basic program for 1974-75 was determined to be $826.55 per child. All districts receive flat grants. Only those districts that are unable to attain the $826.55 level receive equalization funds.

Oregon has intermediate educational jurisdictions, known as Intermediate Education Districts. The IED's conform fairly closely to county boundaries, and in some cases to the boundaries of unified school districts. Many districts in Oregon are not unified. The IED's have an operationsl function and an equalizing function. The operational functions of IED's are primarily in the area of teacher training, special education, and audio-visual exchange. Some IED's contract with individual districts to manage Federal supplemental (Title) programs.

IED's also equalize taxes at the county level. In counties where the ratio of residency to land and to land value is fairly uniform, the IED's equalization function is minimal. This shows up in tax rates; the district tax rate will be higher than the IED tax rate. (See Table 51.) In counties where there are vast, but sparsely populated areas, and perhaps just one urban area, such as in Harney County, the IED tax rate will be much higher. In Harney County, the IED equalizes at about 80% for the districts.

In the three areas studied, where there are concentrations of Indian people, Jefferson, Umatilla, and Harney Counties, the amount of state assistance varied widely. In Ferrerson County, where utility companies constitute about 50% of the total taxable property, the state contributed 22% to the funding of District 509 J, a unified school district. In Umatilla County, Pendleton school district 16 R (not unified) had 30% of its operational costs paid by the state. In Harney County, District 1 (elementary) received 33% of its money from the state. District 2 (high school) received 25% of its funding from the state. (See Table 52.)

In computing a local district's ability to provide a basic program, the state does not consider the actual taxes that the local district levies against itself (including IED levies), nor are PL 874 funds a consideration. It is the opinion of district and IED superintendents, and of State Education Office people, that Oregon's system of apportionment was neither an incentive nor a deterrent, to local taxing motivation. The apportionment process seems rather to assess what a district could provide, if it wished, based upon the true cash value of taxable properties. In that regard, there seems to be nothing prohibiting local districts from taxing themselves at a low rate.

All districts receiving PL 874 monies articulated an "in lieu of taxes" philosophy, and did not see any special need to deploy those funds in behalf of the populations without whom the funds could not have been justified.

Indians in all three locations believed they should have some direct involvement in deploying those funds. This was particularly true of Warm Springs, a relatively wealthy reservation within the Jefferson County school district.

Most superintendents interviewed expressed ambivalent feelings about Federal funds. They all wished that the supplemental funds were as easy to get and administer as PL 874 monies. Most resented the in-kind contribution required in administration (payroll, accounting, etc.), and the time and energy required in doing needs assessments and working with parent advisory groups. All stated, however, a liking for the parent involvement with the schools that the supplemental programs generated. They all felt that the title programs were usually funded at operational levels.

The situations of the Warm Springs, Umatilla and Burns Paiute Indian groups are vastly different from each other, with respect to tribal economic development, and to their subsequent ability to contribute to their own educations. Relative economic affluence is no guarantee that the tribe will compete successfully in the decision making processes in local school district. The Warm Springs tribe believe they do not get their money's worth of self determination, in relation to the enormous dollar contributions made by the reservation from planned capital improvements (utilities). The other two groups, Umatilla and Burns Paiute, don't believe they have any impact at all in the local, predominantly white school districts.

District	Total assessed valuation	Assessed valuation Per pupil	Tax rate	Expenditures per pupil
Burns I	$ 38,166,840	$ 44,902.16	3.41/100	$ 1,092.48
IED	104,652,197	123,120.23	15.69	
Burns II	69,863,398	140,570.22	.85	N/A
IED	104,652,197	210,567.80	15.69	
Jefferson Co.	164,970,199	70,741.94	7.25	1,409.04
IED	204,712,167	87,783.94	5.64	
Pendleton	185,103,620	52,289.	8.81	1,322.98
IED	518,810,806	146,556	9.59	

Table 51. 1974-75 total assessed valuation, assessed valuation per pupil, tax rates, and expenditures per pupil, for local school districts and Intermediate Education Districts studied in Oregon. Data for Pendleton from the district school superintendent; all other data from the County Assessors' Offices.

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District	I Approximate total revenue	II Revenue from State	III Revenue from State as percent of total revenue	IV Revenue from State per pupil	V Local revenue	VI Local revenue as percent of total revenue	VII Local revenue per pupil	VIII State aid dollars generated for each dollar of local aid	IX PL 874 revenue	X PL 874 revenue as percent of total revenue	XI PL 874 revenue per eligible pupil
Burns I	$ 751,235.	252,563	33	297.13	466,672	62	549.03	0.54	32,000	4%	403.06
Burns II	728,455.	182,946	25	368.10	517,755	71	1,041.80	0.35	27,754	3%	630.77
Jefferson Co.	3,035,089.	675,626	22	289.72	1,836,130	60	787.36	0.37	523,333	17%	691.78
Pendleton	4,120,989.	1,272,289	30	359.40	2,770,700	67	803.10	0.46	78,000	1%	536.08

Table 52. 1974-75, State Local and PL 874 revenues compared for school districts studied in Oregon. Approximate total revenue excludes categorical aid, State revenue figures from State Department of Education. Other revenue figures from district superintendents.

District	Total expenditures in 1974-75	Expenditures per pupil	Expenditures per pupil as per cent of average for State in 1973-74
Burns I	$ 928,609	$ 1,092.48	81
Jefferson Co.	3,285,891	1,409.04	104
Pendleton	4,683,352	1,322.98	98

Total 53. Total expenditures in 1974-75, expenditures per pupil, and expenditures per pupil as percent of statewide average expenditure per pupil in 1973-74. Total expenditures exclude supplementary programs and debt service from district adopted budgets.

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District	PL 874	PL 815	JOM	ESEA I	ESEA III	ESEA VII	IEA IV	Other
Burns I	+	0	+	+	0	0	+	
Burns II	+	+	+	0	0	0		
Jefferson Co.	+	0	+	+	0	0	+	
Pendleton	+	0	+	+	0	+	+	

Table 55. Receipt by school districts of funds from various Federal programs, for four Oregon districts. Presence of funds is indicated by +. Information from district superintendents.

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District	Total enrollment	Indian enrollment	Indian enrollemnt as percent of total	Tribe
Burns	737	36	5%	Burns Paiute
Jefferson Co.	2,376	693	29%	Warm Springs Confederated Tribes
Pendleton	3,698	215	6%	Umatilla

Table 56 . Total enrollment and Indian enrollment in districts tudied in Oregon. Data from the Rural and Ethnic Survey 1974-75, Oregon State Department of Education.

MONTANA

Montana has a population of 721,000 in a huge land area; there are five people per square mile in the state. Of its 721,000 people, 25.7% are of public school age. Montana's winters are notably severe. With six and eight foot drifts, students are not able to travel for any distance, if at all, to reach a consolidated school district. While the few major highways are kept passable, the majority of this large state is accessed through county-improved and unimproved roads. Therefore, Montana is divided into 56 relatively small counties and 643 even smaller school districts. At first impression, this would appear an inefficient method of operating public schools. Some school districts have as few as two students and over 30% of these districts are three-teacher schools or less. Of the 643 school districts, 44 are designated "non-operating school districts." These districts apparently have found ways of beginning a consolidation effort on a local level. The students from these districts are transported to adjoining "operating" school districts, although the financial responsibility (through local taxes) remains in the "non-operating" districts.

Montana has constitutionally and legislatively guaranteed and explicitly stated its assumption of the responsibility to educate all children. The state clearly delineates its role in funding school districts. It has a mandatory basic county tax of 25 mills for elementary schools and 15 mills for high schools. These county tax revenues are then augmented by state equalization aid. The state assumes responsibility for any deficiency that leaves a district below the foundation program level. The foundation level is 80% of the legislated maximum budget level that can be generated without a vote of the electorate of the district. State law allows each district to levy nine mills for elementary schools and six mills for high schools. If the district levies this millage, the state will then add any additional needed funds to generate the full 100% allowable budget. The district can then vote additional levies to generate monies in excess of the State guaranteed budget. Schools with less than 10 students can get extra funding in certain instances by proving that they are, in effect, isolated.

In the three Montana districts studied, the percentage of state contribution to the basic support budget ranged from 10.5% to 33.8%. (See Table 57.) These figures reflect the State funding formula which allows the state to "pick up the slack" for a low tax base area. For example, in this instance, the Lame Deer district received 33% State aid. This district consists of almost totally Indian reservation land, and only generates 6.6% of its revenue locally. Other richer districts studied carried as much as 42.3% of their funding through district revenues. PL 874 revenues in the districts studied ranged from 2.6% in a "richer" district to 18.5% in Lame Deer. Another reason for the high percentage in Lame Deer is that the district has 97.9% PL 874 students.

With the large number of districts that exist in Montana, not all district administrators shared the same level of competency and educational experience as did administrators in other states who shared the same title. Though no examples of incompetency were observed, comments were heard from various sources, including the State offices, that certain superintendents had embezzled school funds; for other superintendents such excuses as, "He's the fourth superintendent in the district in three years," or "Well, he doesn't understand Federal programs," were offered. The State director of the Title I programs and the State director of Title IV both showed schedules of how the director and his staff had held seminars and workshops in every area of the state in previous years as well as plans for the upcoming school year. These directors, as well as the State Director of PL 874 monies, all showed great interest in assisting the local districts in every way possible. For example, the State PL 874 desk takes the time and effort to collect all information necessary to make the tedious individual district comparisons of cost levels that allow eligible districts to get PL 874 funds at the highest possible legal rate.

The greatest compliment to Montana's educational system can also be cited as its greatest drawback: It serves every child as close to his home as possible, and therefore creates an unmanageable number of local school districts.

With over 172,000 children to educate, Montana generates an average of $237.52 per capita in taxes to support its schools, which is slightly higher than the national average.

It appears that in Montana there is not discrimination against Indian students or Indian districts. There is no attitude of "those people" as compared with "us." It is explicitly stated in the State's Constitution that all students will have equal educational opportunity - and the State's funding seems to live up to this concept.

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	I	II	III	IV	V	VI	VII	VIII	IX	X	XI
District	Total revenue	Revenue from State	Revenue from State as percent of total revenue	Revenue from State per pupil	Local revenue	Local revenue as percent of total revenue	Local revenue per pupil	State aid dollars generated for each dollar of local aid	PL 874 revenue	PL 874 revenue as percent of total revenue	PL 874 revenue per eligible pupil
Colstrip El.	$ 553,235	$102,628	18.6	$370.50	$450,606	81.5	$1,626.74	0.23	$ -0-	-0-	$ -0-
Colstrip H.S.	464,553	57,952	12.5	311.57	388,817	83.7	2,090.41	0.15	34,820	7.5	839.04
Hardin El.	1,195,514	317,878	26.6	250.89	606,877	58.3	511.70	0.52	208,412	17.4	417.24
Hardin H.S.	550,612	57,934	10.5	117.99	341,878	68.4	681.03	0.17	74,013	13.4	433.19
Lame Deer	367,176	124,243	33.8	378.79	174,686	47.6	532.58	0.71	142,142	38.7	470.67
Lodge Grass					N/A	N/A	N/A	N/A	122,694	N/A	484.00
									70,324		692.85

Table 57. 1974-75 Total, State, local and PL 874 revenues compared for school districts studied in Montana. Data from district adopted budgets.

District	Total assessed valuation	Assessed valuation per pupil	Tax rate	Expenditures per pupil
Colstrip Elem.	$10,207,513	$36,850.23	21.17 mills	$1,997.24
Colstrip H.S.	11,849,844	63,708.84	14.74	2,497.60
Hardin Elem.	11,520,441	9,092.69	10.02	943.58
Hardin H.S.	12,929,815	26,333.64	8.20	1,121.41
Lame Deer	228.683	697.20	-0-	1,119.40
Lodge Grass Elem.	2,300,917	6,950.77	7.41	
Lodge Grass H.S.	15,571,704	111,226.46	1.54	N/A

Table 58. 1974-75 total assessed valuation, assessed valuation per pupil, tax rates, and expenditures per pupil for districts studied in Montana. Data from County Accessors' offices.

District	Total expenditures in 1974-75	Expenditures per pupil	Expenditures per pupil as percent of average for State in 1973-74
Colstrip Elem.	$ 553,235	$1,997.24	204
Colstrip H.S.	464,553	2,497.60	255
Hardin Elem.	1,195,514	943.58	96
Hardin H.S.	550,612	1,121.41	114
Lame Deer	367,176	1,119.40	114

Table 59. Total budgeted expenditures in 1974-75, expenditures per pupil, and expenditures per pupil as per cent of statewide average expenditure per pupil in 1973-74., for five Montana school districts. Data from district adopted budgets.

District	Total district revenue	Revenue per pupil	Revenue excluding all Federal aid	Revenue excluding all Federal aid, per pupil
Colstrip Elem.	$553,235	$1,997.24	$553,235	$ 1,997.24
Colstrip H.S.	464,553	2,497.60	429,733	2,310.39
Hardin Elem.	1,195,514	939.87	987,102	776.02
Hardin H.S.	550,612	1,121.41	476,599	970.67
Lame Deer	367,176	1,119.44	225,034	685.08

Table 60. Comparison of district budgeted revenue with and without Federal aid by total amounts, and per pupil, for five Montana school districts. Data from district adopted budgets.

District	PL 874	PL 815	JOM	ESEA I	ESEA III	ESEA VII	IEA IV	Other
Colstrip Elem.	0	0	0	+				+
Colstrip H.S.	+	0	+	+				+
Hardin Elem.	+	0	+	+			+	+
Hardin H.S.	+	0	+	+			+	+
Lame Deer	+	+	+	+			+	+

Table 61. Receipt by school districts of funds from various Federal programs, for five Montana districts. Presence of funds is indicated by +. Data From district superintendents.

District	Total enrollment	Indian enrollment	Indian enrollment as percent of total	Tribe
Colstrip Elem.	277	20	7%	Northern Cheyenne
Colstrip H.S.	180	35	19%	Northern Cheyenne
Hardin Elem.	1,203	388	32%	Crow, Northern Cheyenne
Hardin H.S.	519	111	21%	Crow, Northern Cheyenne
Lame Deer	328	314	96%	Northern Cheyenne
Lodge Grass	471	345	73%	Crow

Table 62 . Total enrollment and Indian enrollment of districts studied in Montana. Data from Montana Educational Directory 74-75, Office of Superintendent of Public Instruction.

IDAHO

Idaho's population is roughly 800,000 of which only 55% was considered urban in 1970. A third of the state's land area is national forest, and there are numerous Federal installations in addition to Indian reservations. There are 115 school districts in the state, of which 14 receive Johnson-O'Malley supplementary funding. While the school population is a relatively large percentage of the total population, Idaho also has a teacher : pupil ratio of 21.4, which is a greater ratio than 41 of the states have.[1] With this large number of teachers Idaho also pays a low average teaching salary - $9,242 in 1974-75, or 43rd among the 50 states.[2] At the same time teaching salaries rose 10.2% between 1973-74 and 1974-75, the sixth highest increase in the nation.[3] There were also comments in interviews with superintendents that suggested that teacher militancy was rising. In Idaho plan for financing education, teachers' education and experience is not a weighted factor, reflecting among other things the rural character of the state. Such weighings tend to disfavor rural areas, as the New Mexico report, above, indicated.

Idaho has a state and county foundation program for financing public education. The state subtracts or takes credit for local contributions toward a foundation amount, an amount which is ultimately based on available revenues rather than on districts' costs. Thus, in 1974-75 the state used a figure of $519 per pupil in calculating foundation program allocations; in 1975-76 the figure will be $570. Both figures were obtained by dividing a weighted ADA for the whole state into available funds. There is a 30% weighting for grades 7 - 12, and other weightings such as special education--60% in 1974-75. A school district takes its own weighted ADA, and multiplies it by the average "cost" figure above (say, $510) to compute the foundation funds to which it is entitled. However, all those funds do not come from the state. Some are from the school district levy, some from countywide school levy. The state provides the difference between what those levies raise and the foundation amount.

In order to participate in the foundation program a school district must levy at least 22 mills for maintenance and operation and the county, 8 mills more. A few very rich districts with any where from four to ten times the state average of $7,025.22 assessed valuation behind each youngster[4] have opted out of the foundation program; at 22 mills these districts can raise what they need. A school district can increase its levy another five mills, to 27, by vote of the board, and can increase it any additional amount by vote of the people. There is then a five mill area in which inequalities among districts can arise. Rich districts probably benefit from the gap since the additional millage is not subtracted from the foundation amount.

In the calculation of state support, assessed valuations of each district are adjusted to a statewide average based on the state tax commission's study of sales : assessment ratio. Valuations are fractional at about 17.5% in 1974-75, and moving toward 20% statewide (see Table 63); the assessment ratio is uniform for all categories of property.

The foundation program has sparsity-like weightings based on distances of schools from a central location and from each other. The state pays 80% of salaries of certain ancillary personnel working with exceptional children.

No Federal funds are taken into account for purposes of the foundation program. Districts commingle their PL 874 funds with their operating revenues, but those PL 874 funds are not subtracted from the foundation amount as local tax contributions are. One administrator noted that this treatment of PL 874 funds made districts with large Indian enrollments relatively rich, and could be a source of resentment among districts not so blessed. In any event, it seemed clear that the foundation program did not discriminate against Indian districts. Funds from Johnson-O'Malley are strictly supplementary. There is nothing in the foundation program that is different for districts with and without JOM or any other Federal Indian education funding. This supplementary use of JOM appeared to be a matter of state policy and was borne out by local interviews as well.

Responses to questions about PL 815 implied that such funds were as rare as rain in the desert. (See Table 64.)

At the time of the field interviews for the study, Idaho school district officials and others were alarmed at the prospect of severe cuts in their JOM funding. Subsequent events have reduced their alarm. Some spoke of making up their losses in JOM with Title IV funds. There were complaints about late notification of levels of JOM funding, but not at the pitch of cries of distress. In two school districts administrators expressed a dislike for Federal categorical programs generally, mainly because of the bureaucratic hassle they bring with them.

The major problem with Idaho's plan for financing public education seemed to be an unrealistically low "cost" factor which was actually a revenue-available factor. The low expenditures per pupil in Idaho (See Table 65) seem related to a poverty of revenue, and not to any discrimination against Indian districts. There is no state severance tax; there is a mine profits tax which is only important in Shoshone County--not the site of any of the three districts studied, nor of any of the 14 JOM-receiving districts. Lack of income and large Federal impact help account for the state's not taking credit for PL 874 revenues.

Notes to Idaho Report

1. Rankings of the States, 1975, National Education Association.
2. Rankings.
3. Rankings.
4. Financial Summaries: Idaho School Districts, July 1, 1973 - June 30, 1974, State of Idaho, Department of Education, Boise, p. 4.

District	Total assessed valuation	Assessed valuation per pupil	Tax rate	Expenditures per pupil
Blackfoot	$ 20,616,964	$ 5,620.76	46.28 mills	$ 752.78
Lapwai	4,325,204	7,208.67	34.48	934.72
Pocatello	55,091,883	4,522.40	52.746	683.66

Table 63. 1974-75 total assessed valuation, assessed valuation per pupil, tax rates, and expenditures per pupil for districts studied in Idaho. Data from District Superintendents, County Auditors, and the State Department of Education.

District	PL 874	PL 815	JOM	ESEA I	ESEA III	ESEA VII	IEA IV	Other
Blackfoot	X	0	X	X	X		X	
Lapwai	X	0	X	X	0		X	II
Pocatello	X	0	X	X			X	II

Table 64. Receipt by school districts of funds from various Federal programs, for three Idaho districts. Presence of funds is indicated by X. Under "Other," II represents ESEA, Title II funding. Information from District Superintendents.

District	Total expenditures in 1974-75	Expenditures per pupil	Expenditures per pupil as percent of average for State in 1973-74
Blackfoot	$ 2,751,209	$ 752.78	103
Lapwai	560,830	934.72	128
Pocatello	8,328,358	683.66	93

Table 65. Total expenditures in 1974-75, expenditures per pupil, and expenditures per pupil as percent of statewide average expenditure per pupil 1973-74, for three Idaho school districts. Total expenditures are total budgeted expenditures excluding supplementary programs and debt service. Data from district adopted budgets.

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI
District	Total revenue	Revenue from State	Revenue from State as Percent of total revenue	Revenue from State per pupil	Local revenue	Local revenue as per-cent of total revenue	Local revenue per pupil	State aid dollars generated for each dollar of local aid	PL 874 Revenue	PL 874 revenue as per-cent of total revenue	PL 874 revenue per eligible pupil
Blackfoot	$2,761,209	$1,581,890	57.3	$431.27	$880,673	31.9	$240.00	1.80	$171,000	6.2	$214.82
Lapwai	560,830	281,830	43.3	469.72	208,750	36.0	347.91	1.35	43,000	7.7	241.57
Pocatello	8,328,358	4,940,840	59.3	405.59	2,503,061	28.3	205.48	1.97	187,333	2.2	313.79

Table 66. 1974-75 Total, State, local, and PL 874 revenues compared for three Idaho school districts. Total revenue is total budgeted revenue excluding categorical funds. Data from district adopted budgets.

District	Bonding capacity	Bond encumbrance	Encumbrance as percent of capacity
Blackfoot	$ 4,123,390	$ 3,000,000	73%
Lapwai	865,040	86,000	99%
Pocatello	11,018,375	9,670,734	88%

Table 67. Bonding capacity and encumbrance compared for three Idaho school districts. Data from District Superintendents.

District	Total district revenue	Revenue per pupil	Revenue excluding all Federal aid	Revenue excluding all Federal aid, per pupil
Blackfoot	$2,761,209	$752.78	$2,590,209	$706.16
Lapwai	560,830	934.72	517,830	863.05
Pocatello	8,328,358	683.66	8,141,025	668.28

Table 68. Comparison of district revenue with and without Federal aid, by total amounts, and per pupil, for three Idaho school districts. Total revenue is total budgeted revenue excluding categorical funds. Data from adopted budgets for school districts.

District	Total enrollment	Indian enrollment	Indian enrollment as percent of total	Tribe
Blackfoot	3,948	597	15%	Shoshone Bannock
Lapwai	618	274	44%	Nez Perce
Pocatello	12,182	408	3%	Shoshone Bannock

Table 69 . Total enrollment and Indian enrollment for three Idaho districts. Data from District Superintendents.

IOWA

South Tama

The basic support issue in the South Tama Community School District is not need but rather distribution of responsibility for the pupils living on Indian land. The Bureau of Indian Affairs and the school district now share that responsibility.

Although entirely within the boundaries of the South Tama school district, the Mesquakie land is not considered part of the district.[1] The Mesquakie Tribe has resisted attempts to incorporate their land into the school district. In 1968 the Bureau of Indian Affairs attempted to close its day school on the settlement. The Mesquakie Tribal Council obtained an injunction from the Federal District Court in Cedar Rapids preventing the closing. The court approved a final disposition in which the Bureau of Indian Affairs continued to own and maintain the physical plant while the South Tama school district operated the instructional program. The instructional program continues to be funded by a combination of Johnson O'Malley basic support revenue, PL 874, and revenue from the State of Iowa's Foundation program.

Indian pupils attending the schools outside Indian land are supported by PL 874, State Foundation funds, and Johnson O'Malley basic support. The BIA Minneapolis Area Office indicated that the Johnson O'Malley amount is determined by taking the cost of a program (roughly $1,300 per pupil in high school, $1,100 per pupil in elementary school) per Indian pupil, then subtracting the revenue per Indian pupil received from the State and from

PL 874. The Bureau of Indian Affairs pays the difference, which can be considerable. The State provides roughly $580 per pupil and PL 874 roughly $250 per pupil. The low PL 874 amount results from the large percentage of category 3-B pupils. While the BIA does not consider its contribution to be "tuition" (since the amount is less than the "out of district" pupil would have to pay), the funds essentially serve that purpose. The Johnson O'Malley financed "tuition" is simply reduced by the State and PL 874 contribution. Without Johnson O'Malley support, the tribe is still required to pay the district the difference between the costs of educating Indian pupils and the amount received from the State and PL 874. When, in July, 1975, the South Tama school board temporarily withdrew as a contracting party, it indicated that: "Indian students who live on the Settlement are welcome to attend the South Tama School District as they have in the past. Their attendance will be subject to assessment of a tuition cost."[2] It is clear that the South Tama school district makes no major financial contribution to the education of Indian students.

The district is able to avoid financial responsibility because of the ambiguous legal situation. Since the tribe has resisted being considered part of the district, no one has pressed for a legal opinion about this relationship. The Mesquakie Tribe and the Bureau of Indian Affairs have "a good working relationship" with the district. Since the district makes an attempt to accommodate Indian needs in program development and selection of library materials and since the Indian drop-out rate in the past few years has dropped to 4% to 5%, all contracting parties appear satisfied with the arrangement.

It is the ambiguity of the question of responsibility that enables the district to qualify for basic support. Indian pupils comprise only 9% of the student population. The district per pupil revenue available from State, local, and PL 874 funds is $1,041, slightly higher than the Iowa average per pupil expenditure of $1,000. Thus need and impact are not factors.

Federal funds allow for diffuse responsibility. Although the district counts Indian pupils in order to obtain PL 874 and State funds, it does not appear willing to count them as a district responsibility. The tribe's desire to remain separate, and possibly to maintain its relationship with the Bureau of Indian Affairs, allows the condition to go unchallenged.

Notes to Iowa Report

1. South Tama Community School District Desegregation Status Report, July 1975.

2. Correspondence between J.L. Nichols, Superintendent, South Tama, and P.A. Melchior, Area Education Program Administration, July 15, 1975.

MINNESOTA

The State of Minnesota insures a "standard cost" per weighted pupil unit for every school district. The "standard cost" is not a minimum figure but is an attempt to approximate educational costs. The base figure, the 1971-1972 estimated annual cost, is increased annually by the legislature. In 1973-1974 the formula insured that each district would receive $788 per weighted pupil unit. In 1974-1975 it insured $825 per weighted pupil unit.

As a result, State foundation aid rather than the property tax is the main source of public school income. The State's share is determined by subtracting the amount a district can raise from a 30 mill levy on its EARC valuation (EARC valuation is an adjusted valuation made comparable from school district to district by the Equalization Review Committee) from the district's total cost figure. The cost figure equals the district's number of pupil units times the year's standard cost. In determining what the district can pay, the State does not count revenue from PL 874.

The distribution formula provides for special costs resulting from "educational overburden" (a term operationally defined as a percentage of children from AFDC families) by allowing additional weightings for each AFDC child on a sliding scale according to the percentage of AFDC pupils in the school district. The legislature recommends that these funds be spent on the primary grades and requires that they be separately accounted for. The formula also cushions the impact of decreasing enrollment and provides for start-up costs in districts with rapidly increasing enrollment. Any school district can levy more than 30 mills for operational expenses if the voters approve.

Minnesota has equalized the financing of transportation costs. Every district must levy one EARC mill to finance authorized transportation costs. The State pays the balance.

Districts also receive differential payments from the State, for example an agricultural property payment which allows the district to reduce its local levy for operational expenditures and emergency aid for districts which face unusual difficulties not accounted for under present law.

The latest year for which comparative data on Minnesota school districts is available is 1973-1974. In that year expenditures ranged from $849 per weighted pupil to $2,851 per unit. The mean was $1,248. In that year, Red Lake spent $1,864 per unit, more than that spent by over 95 percent of all Minnesota school districts. Expenditures per unit were not reported for Nett Lake and Pine Point. The two basic support districts with a minority of Indian pupils, Mahnomen (23% Indian Pupils) and Waubun (41% Indian pupils), spent slightly less than the average--Mahnomen spent $1,036 and Waubun spent $1,167 per unit. Federal revenue, 57 percent of its 1973-1974 budget, enabled Red Lake to spend substantially more than the average district.

Table 76 data shows the 1974-75 impact of Johnson O'Malley funds for the five Minnesota districts by comparing total revenue per pupil, revenue excluding PL 874 per pupil.

Since Nett Lake, Pine Point, and Red Lake districts are located on non-taxable Indian land, they receive substantial PL 874 revenues. Minnesota does not count PL 874 in determining the amount of State aid, thus these districts have substantial resources available even when JOM and other categorical aid revenues are excluded.

In Mahnomen, Pine Point, and Waubun, JOM basic support enables districts to maintain separate schools for Indian pupils. Mahnomen is a rural district on the edge of the reservation. In 1971-1972 district consolidation incorporated the school at Naytawash into the Mahnomen district. The district wanted to close the Naytawash school, arguing that per pupil costs there were too high to warrant maintaining it. However, the Indian community wanted to maintain the separate school. The facilities were relatively good, and the community did not want to bus its elementary children farther away to schools where they would be in the minority. The community then negotiated for basic support which compensated the district for the higher costs reportedly involved in operating the Naytawash school, and the district did not close it. A similar condition exists at Waubun, where JOM funds reportedly are used to maintain an Indian school. The Pine Point Experimental School, though made an independent unit within the Park Rapids district by the State legislature, appears to be a similar situation. The separate 93% Indian school is run by a committee which acts as a board of education. It is exempt from some State requirements, such as those governing teacher certification. All revenues come from State and Federal sources. The Park Rapids district provides no financial support.

The Minnesota districts receiving basic support do not appear to require this revenue to provide minimum educational programs for their students. The districts with the least revenue are also those with smaller proportions of Indian students. The State funding formula eliminates local property wealth or percentage of non-taxable Indian land in a district as a barrier to providing a minimum education. Except for Red Lake, the only justification for basic support which has been offered is that it enables Indian communities to keep their local elementary schools open in the face of district pressure to close them.

NEBRASKA

Through its School Foundation and Equalization Fund, the State of Nebraska insures that each district has what the State defines as a "minimum level" of funding for public education. This level ranges from $225 per kindergarten pupil to $550 per secondary school pupil. To determine its minimum level a school district multiplies the average daily membership in each category by this legislated amount. A sparsity factor increases the total in districts with scattered populations from 10% to 40% depending on population density.

To meet this figure the State provides both a flat grant and State aid. The flat grant per average daily membership ranges from $17.50 for elementary pupils to $49 for secondary pupils.

To be eligible for State aid a district must raise a minimum levy of from 5 to 12 mills depending on the class of district. In determining the amount of State aid, a district determines its minimum level then subtracts from that figure the funds it receives from the flat grant, the qualifying levy, tuition fees, transportation reimbursements, fines and license fees. The difference is supplied by the State.

Districts also receive State funds for special programs and as an incentive to hire teachers with advanced training. The State Department of Education distributes funds from the Revenue Sharing Trust Fund so that each district receives the same amount per pupil.

This minimum level of funding insured by the State is inadequate to meet most districts' educational needs. Since there is no State limit on the amount the district can levy, local districts may fund more expensive programs.

The three Nebraska districts which receive basic support, Macy, Santee, and Winnebago, depend on Federal funds for over half of their revenue. (See Table 75.)

Without Federal categorical aid Winnebago receives $1,170 and Macy $1,032 per pupil, slightly over the State average of $950. Without categorical aid Santee receives only $660 per pupil, substantially less than the State average expenditure.

Macy and Winnebago are located within a few miles of each other. The separate communities, one Omaha the other Winnebago, want to maintain separate, community controlled schools. Despite incentives and arguments that consolidation with Walt Hill, a predominantly non-Indian district close to Macy and Winnebago, would lower per pupil costs, the communities have voted against consolidation. Federal aid, both JOM basic support and categorical funds, enable them to operate more expensive than average programs.

Without JOM basic support and categorical aid Santee has little revenue. JOM basic support makes the difference between less revenue than the State average and more than the average. The district is not making a major effort to finance its schools. Only 8% of the land consists of non-taxable Indian land. The current levy reported to the Aberdeen Area Office in May, 1975 was only 16.05 mills on property assessed at a rate of 35%. However, since the levy raised only $4,432 in 1974-1975, doubling or even quadrupling its tax effort would not provide revenue as great as the JOM amount. The Johnson O'Malley basic support appears necessary if Santee's revenues per pupil are to equal the State average.

Macy and Santee have argued that they could not operate their schools without basic support and that the Bureau of Indian Affairs would have to take over Indian education. This argument does not appear justifiable in the case of Macy. Both districts see basic support as necessary for Indian communities to maintain separate school districts. In all three districts basic support enables the school districts to operate more expensive programs than the average school district can.

SOUTH DAKOTA

The State of South Dakota, through the Minimum Foundation Program, guarantees each district a minimum revenue for each weighted classroom unit. That minimum, determined by the legislature, is $10,000 for 1975-1976. A classroom unit is a group of pupils weighted to allow districts with smaller populations to use fewer pupils to make a unit than do larger districts. The minimum is met through a combination of local and State effort.

The school district's contributions to the minimum is the amount that 13 mills will raise on its agricultural valuation and 18 mills will raise on the non-agricultural valuation. The State contributes a flat grant for each classroom unit. In 1975-1976 this will be $1,500. If the sum of the revenue received from the qualifying levy, the flat grant, tuition, fees, and the district's share of the State apportionment (interest from the Permanent School Fund) does not equal the minimum revenue, the State provides "equalization support" equal to the difference.

Local districts may levy up to 24 mills on their agricultural valuation and 40 mills on the non-agricultural valuation for the General Fund or operational budget. The district may levy an additional amount up to 2 mills for special education. Capital expenditures are financed by bond issues. The district's bonded indebtedness is limited to 10% of assessed valuation.

The State provides aid to districts for pupil transportation. The law enables the State to provide 50% of a district's approved costs up to \$.50 per mile. However, legislative appropriations limit the available money which is then pro-rated among districts. Transportation is a major expense in this largely rural State. An NEFP[1] study of South Dakota found the per pupil costs of transportation to be in excess of those in other States; however, average costs per pupil mile were less than in comparable districts in other States.

Because of the limited State role in financing public education, local property wealth is the basis for school finance in South Dakota. An interim committee of the State legislature is studying school funding formulas and will introduce legislation to change the present system. Since the State of South Dakota has no income tax, its potential to increase its share of school finance is dependent on tax legislation.

The revenues available to local districts are limited by assessment practices. Although the school districts have the responsibility of setting their levies, the county, through a Director of Assessment appointed by the County Commission, determines the assessed valuation. Statute sets the assessment ratio at 60% of market value. A sales ratio test conducted by the State Board of Equalization indicates that no county assesses at that rate. If a county's assessment ratio is less than the State average, the Board of Equalization may raise the county's assessments by 1% for every percentage it falls below the average. The State average assessment in 1973, as determined by the sales ratio test, was only 35.1% for rural property and 39.6% for urban property.

The State Department of Revenue assesses utilities and railroads. While assessment does not keep pace with inflation, the assessed valuation of utilities and railroads approximates the statutory 60%. When utilities are operated by cooperatives, the cooperatives pay a gross receipts tax to the school districts rather than a property tax. Only two districts in this study received such revenue, Todd County ($8,845) and White River ($2,221).

An official in the State Department of Revenue reported that neither the districts nor the State receives revenue from lands leased from non-taxable Indian holdings. There are no mineral resources being exploited on non-taxable Indian lands.

The seven South Dakota districts which receive basic support currently are taxing themselves at the maximum rate. Statewide, only 27.23% of all districts levy at the maximum level on their non-agricultural valuation. However, in all seven districts property is assessed at well below the 60% rate, and in some property is assessed at below the State average. The sales ratios on agricultural property range from 30.7 to 38, the ratios on non-agricultural property range from 29.8 to 44.4.[2]

Only two of the seven districts receiving basic support have more than 50% Indian students. In Smee, 93% of the students are Indian, in Todd County, 78% of the students are Indian. In the other five districts the percentage of Indian pupils ranges from 18 to 47.

Sisseton is the only one of the seven districts whose total revenues, excluding all categorical aid, per pupil is less than the State average expenditure per pupil, a figure that includes all revenues. Since only 35% of Sisseton's pupils are Indian and only 12% of its land is non-taxable Indian land, Indians do not appear to be the cause of the district's low revenue. According to a BIA official, many of the Indian pupils in the Sisseton district do not live on their allotments. Thus they are either not eligible for PL 874 or they are Category B pupils. Thus school district officials seem to feel Indians are not contributing their share to the total budget. The district has argued that a loss of Johnson O'Malley basic support will create a situation in which the Bureau of Indian Affairs will have to take over Indian education.

Waubay, West River, and Smee have also told the BIA that loss of JOM basic support will force the Bureau to resume operation of Indian schools. The poverty argument is not strong. In Waubay only 11% of the land is non-taxable Indian land. In West River, 34% of the land is non--taxable. Waubay's percentage of Indian pupils is 31, West River's 26. Both districts receive significantly more revenue from sources other than Federal categorical programs than the average district in the State spends. Although Smee is 93% Indian pupils and 79% of its land is non-taxable Indian land, funds from PL 874 appear to compensate for low property wealth per pupil. Without JOM basic support or Federal categorical funds, the district receives $1,047 per pupil. All three districts appear capable of operating a minimum program (if the State average expenditure per pupil is a standard for minimum program) without Johnson O'Malley basic support.

1973 - 1974 ASSESSMENT RATIOS

District	Sales Ratio Agricultural	Sales Ratio Non-Agricultural
McIntosh	30.7	42.6
Smee	30.7	42.6
Waubay	38	42.2
White River	32.6	29.8
Sisseton	36.6	44.4
Todd County	30.9	30.9
West River	35.1	33.6

Table 70. 1973-74 Assessment: Sales ratios for agricultural and non-agricultural property in seven South Dakota school districts.

District	Railroads	Western Union	Telephones	Electric
McIntosh	17,421	-0-	65,059	city 38,717* Township 6,776
Smee	-0-	-0-	-0-	-0-
Waybay	6,835	-0-	76,044	city 89,003 Township 30,133* 43,373
Sisseton	4,553	299	264,803	36,175
Todd County	-0-	-0-	-0-	none - co-ops**
West River	-0-	-0-	-0-	none - co-ops*
White River	-0-	-0-	47,161	4,640

Table 71. Assessed valuation of major taxpayers in seven South Dakota school districts.

* Respondents in Revenue Department were unable to separate a school district assessed valuation from this.

** Co-ops pay a gross receipts tax which goes to the school district.

1. PL 874 Enrollment Figures

District	1973 - 1974		1974 - 1975	
	3(A)	3(B)	3(A)	3(B)
Smee	170	4	168	4
McIntosh	95	147	68	140
Waubay	68	46	85	25
White River	160	98	178	97
Sisseton	256	438	245	447
Todd County	1,250	128	1,219	187
West River	114	53	115	65

Data from Norris Paulson's office, State Department of Education. Figures taken from OE reports of payments to districts. (last payment of the year). This office reports that the number of students changes from payment to payment.

2. Total Indian Enrollment and Total Enrollment

District	1973 - 1974		1974 - 1975	
	# Indian	Total	# Indian	Total
McIntosh	80	484	51	425
Smee	171	184	157	168
Waubay	137	490	142	483
White River	211	469	237	489
Todd County	1,446	1,854	1,397	1,806
West River	143	617	132	626
Sisseton	571	1,636	593	1,636

This is the only figure the State Department of Education keeps which enumerates Indian students. It is the enrollment figure from the beginning of September and thus, the State Department of Education official in charge, Al Bies, admits, Indian enrollment is underrepresented since Indian pupils are more likely to enroll later in the semester. This official was very resistant to the idea of counting Indians at all and had refused to keep counts until the superintendent told him to. He also did not know what criteria were being used to designate Indians, though he was aware that criteria vary, e.g., from IEA Title IV to JOM.

3. BIA Enrollment Figures

McIntosh	87	484 (18%)	74	425 (17%)
Smee				
Waubay	150	490 (30%)	145	483 (30%)
Sisseton	566	1,332 (35%)	605	1,644 (37%)
Todd County	1,460	1,868 (78%)	1,453	1,859 (78%)
West River	159	617 (26%)		
White River	229	469 (49%)	233	492 (47%)

Figures reported by the school districts to the Aberdeen Area Office in their requests for Johnson O'Malley funds.

Table 72. Enrollment information for seven South Dakota school districts.

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4. PL 874 Enrollment figures reported by the district to the Aberdeen Area Office

District	1973 - 1974		1974 - 1975	
	A	B	A	B
McIntosh	100	165	71	140
Smee				
Waubay	71	48	71	48
Sisseton	192	535	257	469
Todd County	1,230	145	1,219	187
West River	128	42		
White River	166	101	178	97

Figures reported to the area office in May of 1974 and 1975 in the district application for Johnson O'Malley assistance. All PL 874 enrollment figures are Average Daily Attendance.

Table 72. (continued). Enrollment information for seven South Dakota School districts.

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Notes to South Dakota Report

1. Kern Alexander and K. Forbis Jordan, Financing the Public Schools of South Dakota, South Dakota Division of Elementary and Secondary Education, 1973.
2. Educational Statistics 1973-74, South Dakota State Department of Education.

Comparison of Iowa, Minnesota, Nebraska, and South Dakota

Of all JOM basic support districts in Iowa, Minnesota, Nebraska, and South Dakota, only three, Santee, Mahnomen, and Sisseton, receive less revenue per pupil from sources excluding Johnson O'Malley basic support and Federal categorical programs than the average State expenditure per pupil. Of these, only Santee has a majority of Indian pupils.

In Minnesota, Johnson O'Malley basic support enables Indian communities who otherwise would send children to predominantly non-Indian schools in the district to keep small, all-Indian, high cost schools in operation. In Nebraska, it enables Indian communities to operate their own school districts. In South Dakota, except for Sisseton, Johnson O'Malley revenue enables the districts to spend more than the State average. Although this average amount is low and probably insufficient to provide a good education, it must be sufficient to operate a "minimum" program as defined by the State of South Dakota.

	FY 1973	FY 1974	# JOM Students	FY 1974 $ Per Pupil	FY 1975	# JOM Students	FY 1975 $ Per Pupil
ARIZONA	3,835,000						
(Phoenix)	4,035,000	4,035,000	17,615	229	1,180,000	6,024	196
(Navajo)					3,355,000	13,016	258
(Peripheral Navajo)	2,105,000	2,067,200			2,105,000	1,267	1,661
IOWA	150,000	124,000	237	523	124,000	231	537
MINNESOTA	1,350,000	1,316,300	3,357	392	1,330,000	3,467	384
NEBRASKA	673,000	670,000	715	937	670,000	865	775
SOUTH DAKOTA		1,632,300	5,258	310	1,640,000	4,783	343

Table 73. JOM distribution by States. Data from the Abluquerque Area Office, Bureau of Indian Affairs

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State District	Total JOM	Indian Enrollment	JOM/Per Pupil
South Dakota			
Wakapala			
McIntosh	27,000	87	310
Waubay	30,346	150	202
Sisseton	493,880	566	873
Todd County	290,000	1,627	178
West River	82,477	170	485
White River			
Nebraska			
Winnebago	65,000	310	210
Macy	245,127	369	664
Santee			
Iowa			
South Tama	107,464	232	463
Minnesota			
Pine Point	166,965	93	1,795
Red Lake	328,182	890	369
Waubun	35,812	182	197

Table 74. 1974-75 JOM Distribution per pupil by district, for school districts in South Dakota, Nebraska, Iowa, and Minnesota.

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	Total Revenue	Federal Revenue	%	State Revenue	%	Local Revenue	%	JOM Revenue	%	P.L. 874 Revenue	%	% Indian Enrollment	Total Enrollmen
IOWA													
South Tama [1]	2,791,143	287,181	10	1,294,251	46	1,209,711	43	107,464	4	47,543	2	9	2,450*
MINNESOTA [2]													
Mahnomen	1,352,827	183,006	14	916,250	68	253,571	19	34,816	3	35,999	3	23	1,022
Nett Lake	397,885	189,764	48	192,370	48	15,751	4	87,319	22	71,068	18	100	91
Pine Point	290,695	242,735	84	47,970	17	none	-0-	166,965	57	46,717	16	93	101
Red Lake	2,365,000	820,109	34	910,970	38	13,363	.5	358,640	15	447,458	18	96	870
Waubun	1,426,879	296,370	21	864,631	61	265,878	19	39,128	3	90,007	6	41	946
NEBRASKA [3]													
Macy	865,250	681,881	79	167,930	19	15,439	2	245,127	28	226,147	26	99	397
Santee	105,447	82,613	78	18,402	17	4,432	4	47,000	45	26,019	25	97	74
Winnebago	596,864	352,271	59	136,783	23	107.800	18	65,000	11	165,000	28	85	350
SOUTH DAKOTA [4]													
McIntosh	753,108	211,212	37	85,548	11	456,348	61	67,908	9	60,271	8	18	484
Sisseton	1,983,337	843,991	43	425,789	21	713,557	36	512,809	26	54,198	3	35	1,632
Smee	376,378	271,620	72	67,407	18	37,351	10	125,389	33	102,526	27	93	198
Todd County	3,119,762	1,993,483	64	616,982	20	509,297	16	365,075	12	771,427	25	78	1,460
Waubay	582,460	172,182	30	124,786	21	285,492	49	65,330	11	49,920	9	31	483
West River	817,362	149,233	18	135,108	17	533,021	[illegible]5	50,000	6	74,840	9	26	626
White River	725,533	276,801	38	120,258	17	328,474	45	107,381	15	121,555	17	47	489

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1 - Data for State and local Revenue was obtained from the Iowa State Department of Education in a telephone interview with Mr W. Ley. Since South Tama had not returned its financial state for 1974-1975, the State Department did not have Federal Revenues. One Federal revenues were given by the district to an interviewer. The enrollment figure represents a weighted pupil.

2 - All data for Mahnomen, Nett Lake and Waubun, and enrollmentfigures for Pine Point and Red Lake were obtained from the Minnesota State Department of Education. Red Lake had not submitted its financial statement. The State Department does not keep a separate record for Pine Point. The revenues for these districts were given to an interview by school district personnel.

3 - Macy and Santee data were obtained from the districts' applications for JOM aid from the Aberdeen Area Office. All Winnebago data except for the JOM amount which was not reported, also were obtained from the district appplication on file in the Aberdeen Area Office. Mr. Milisap, the Winnebago Superintendent, in a telephone interview, reported "approximately $65,000" in JOM Revenue.

4 - Revenue figures submitted to the South Dakota State Department of Education by the school districts enrollment figures, except White River and Todd County were obtained from State Department. White River and Todd County enrollment data was taken from district application for JOM and filed in Aberdeen ARea Office.

Table 75. 1974-75 Revenue Sources for school districts in Iowa, Minnesota, Nebraska, and South Dakota.

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	Total Enrollment	Total Revenue	Revenue Per Pupil	Revenue Excluding JOM	Excluding JOM Per Pupil	Total Revenue Excluding All Categorial Aid	Per Pupil
IOWA - 1							
South Tama	2,450	2,791,143	1,139	2,683,679	1,095	2,551,505	1,041
MINNESOTA - 2							
Mahnomen	1,022	1,352,827	1,324	1,318,011	1,290	1,206.615	1,181
Nett Lake	91	397,885	4,372	310,566	3,413	279,189	3,068
Pine Point	101	290,695	2,878	173,700	1,720	263,438	2,608
Red Lake	870	2,365,000	2,719	2,006,360	2,306	1,901,167	2,185
Waubun	946	1,426,879	1,508	1,387,751	1,467	1,222,133	1,292
NEBRASKA - 3							
Macy	397	865,250	2,179	602,123	1.562	409,516	1,032
Santee	74	105,447	1,425	58,447	790	48,853	660
Winnebago	350	596,864	1,705	531,864	1,520	409,583	1,170
SOUTH DAKOTA							
McIntosh	484	753,108	1,556	685,200	1,416	602,167	1,244
Sisseton	1,632	1,983,337	1,215	1,470,528	901	1,193,544	731
Smee	198	376,378	1,901	250,989	1,268	207,284	-1,047
Todd Coutny	1,460	3,119,762	2,137	2,754,687	1,887	1,897,706	1,300
Wauban	483	582,460	1,206	517,130	1,071	460,198	953
West River	626	817,362	1,306	767,362	1,226	742,969	1,187
White Rver	489	725,533	1,484	618,152	1,264	570,287	1,166

1 - Data for State and local revenue was obtained from the Iowa State Department of Education in a telephone interview with Mr. W. Ley. Since South Tama had not returned its financial statement for 1974 - 1975, the State Department did not have Federal Revenues. The Federal revenues were given by the district to an interviewer. The enrollment figure represents a weighted pupil.

2 - All data for Mahnomen, Nett Lake, and Waubun, and enrollment figures for Pine Point and Red Lake were obtained from the Minnesota State Department of Education. Red Lake had not submitted its financial statement. The State Department does not keep a separate record for Pine Point. The revenues for these districts were given to an interview by school district personnel.

3 - Macy and Santee data were obtained from the districts' applications for JOM aid from the Aberdeen Area Office. All Winnebago data except for the JOM amount which was not reported, also were obtained from the district application on file in the Aberdeen Area Office. Mr. Millsap, the Winnebago Superintendent, in a telephone interview, reported "approximately $65,000" in JOM Revenue.

4 - Revenue figures submitted to the South Dakota State Department of Education by the school districts. Enrollment figures, except White River and Todd County were obtained from State Department. White River and Todd County enrollment data was obtained from district applications for JOM aid, filed in the Aberdeen Area Office.

Table 76. 1974-75 Revenue Breakdown per pupil for school districts in Iowa, Minnesota, Nebraska, and South Dakota.

	Total Assessed Valuation	Assessment Ratio	% Non-taxable Indian land	Maximum Legal Mill Levy	Current Levy	State Bonding Limit	Assessed Valuation Per Pupil
				(determined annually by the State)		(5% total assessed valuation x 3.707)	
IOWA - 1							
South Tama	26,350,427	27			49,488		10,957
MINNESOTA - 2							
Mahnomen	7,601,786				38.87 Ag. 47.11 N-Ag.		7,438
Nett Lake	8,130				24.97 Ag. 33.30 N-Ag.		89.34
Pine Point	none	---	100	---	-----	-----	-0-
Red Lake	41,488				none		40.00
Waubun	4,630,651				44.22 Ag. 52.55 N-Ag.		5,952
NEBRASKA - 3							
Macy	580,556	--	59	no limit		40% assessed valuation	1,462
Santee	386,724	35	8	no limit	16.05	40% assessed valuation	5,226
Winnebago	2,274,642	39	28	no limit	44.16	40% assessed valuation	6,499

Table 77. 1974-75 Tax information for school districts in Iowa, Minnesota, Nebraska, and South Dakota.

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	Total Assessed Valuation	Assessment Ratio	% Non-taxable Indian land	Maximum Legal Mill Levy	Current Levy	State Bonding Limit	Assessed Valuation Per Pupil
SOUTH DAKOTA - 4							
McIntosh	Ag. 9,266,080 N-Ag. 1,373,122	34.3	33	24 40	Ag. 28.69 N-Ag 44.69	10% assessed valuation	21,803 3,231
Sisseton	Ag. 11,525,660 N-Ag. 6,881,546	37.6	12	24 40	27.88 43.83	10% assessed valuation	7,045 4,206
Smee	Ag. 570,428 N-Ag. 189,521	34.3	79%	24 40	30.30 45.80	10% assesed valuation	3,395 1,128
Todd County	Ag. 14,700,754 N-Ag. 1,759,308	33.6	62%	24 40	27.69 41.39	10% assessed valuation	8,140 923
Waubay	Ag. 4,671,520 N-Ag. 2,127,159	37.7	21	24 40	29.39 44.72	10% assessed valuation	9,672 4,404
West River	* 15,931,900	36	36	24 40	24 40	10% assessed valuation	25,434
White River	Ag. 11,113,503 N-Ag. 1,135,623	29.6	36	24 40	27.51 42.02	10% assessed valuation	22,727 2,322

1. Iowa data reported by State Department of Education and school districts.

2. Minnesota data reported by State Department of Education.

3. Nebraska data taken from school districts applications for FY 1976 JOM funds filed in the Aberdeen Area Office.

4. South Dakota assessed valuation and assessment ration from Department of Revenue. Although the statutory assessment ratio is 60%, assessment practices do not conform to this practice. The assessment ratio reported here, is a sales ratio. Data on % of non-taxable Indian land was taken from district requests for JOM funds filed in the Aberdeen Area Office. All West River data was taken from the district's JOM request. The maximum legal mill levy of 24 Ag., 40 N-Ag. is operational expenditures. Districts also may levy up to 2 mills for special education and may raise levies for capital expenditures.

Table 77 .(continued). 1974-75 tax information for school districts in Iowa, Minnesota, Nebraska, and South Dakota.

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District	State Funding Per Pupil	Local Taxes Per Pupil	PL 874 Funds Per Pupil	Local Taxes Plus PL 874	Percent Indian Enrollment	Average Revenues Per Pupil Counting All Funds But JOM
Macy	$423	$ 38.88	$569.63	$608.51	99	$1,562.02
Santee	249	59.89	351.60	411.49	97	789.82
Winnebago	391	308.00	471.42	779.42	85	1,519.61
Statewide Average	$265	$768.74		$768.74 (local taxes only)	.02	$1,156.00

Table 78. Comparison of State, local, and PL 874 revenues per pupil in three Nebraska school districts with Statewide average

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VIII. SUMMARY

This report on the financing of Indian education in public schools focused on the Johnson O'Malley Act and its relationship to subsequent laws, on the allocation and use of Johnson O'Malley funds for basic educational costs and for supplementary programs, and on the mixes of local and State tax revenues and Federal revenues that are available to school districts that enroll Indian students.

A careful review was made of the legislative history and intent of Johnson O'Malley, Impact Aid (PL 815 and PL 874), the Elementary and Secondary Education Act, the Indian Education Act ("Title IV") and the Indian Self-Determination and Educational Assistance Act. One of the many points from this review was that the interest of Indian education has long been confounded with the interest of school districts engaged in Indian education. Since JOM began, it has been interpreted in the light of the circumstances and politics of the States, until today the Bureau of Indian Affairs exercises little effective control over the use or allocation of Johnson O'Malley monies.

An investigation was conducted of State plans for financing education in ten States with large enrollments of Indians in public schools. This investigation found that the State's plans keyed the role of property tax, and that the financing plan itself was determined by, among other things, where the State got its money from, and the prevalent attitude toward education in general and toward Indians in particular. Property tax is an emotional issue by the nature of the tax: it is based on judgment and paid voluntarily. The most obvious poverty of "Indian" school districts is not their lack of operating revenue from taxable property, but their lack of bonding capacity and inability to build adequate schools.

A study was made of all districts claiming need for JOM basic support. These districts' revenues and expenditures per pupil with and without JOM were compared with appropriate Statewide averages. No justification was found for the continued payment of JOM basic support in any of the five States where these districts were located. Two confusions have become settled. One is the notion of JOM as an entitlement to districts; the other is the necessity for JOM funds to go to the public schools. In some cases JOM money has made a de facto Federal school out of a local public school. If such Federal support is in the interest of the Indian community concerned, it does not follow that as national policy that support should come from JOM. Several formulas for the equitable allocation of JOM supplementary funds were suggested.

An additional study was conducted of the uses to which Federal supplementary program monies for Indian education were put; its main finding was an absence of accountability at all levels from national to local, and a minimum of watchfulness on the part of the Bureau. A tracing of JOM allocations from the Washington Central Office of the Bureau to the Areas, States or other contractors, and to the school districts or other ultimate recipients showed that large administrative costs were being paid from JOM program funds, costs that need not and should not be coming from JOM program appropriations.

One of the themes of all parts of the study that made up this report was that the public schools are a State institution; neither the

States nor Indian communities are comfortable in dealing with each other. Questions of sovereignty notwithstanding, when Indian children go to public schools they go as individuals into a State system. The whole problem of equalization of funding for education, with its implications for improved educational opportunities for Indians, is in the hands of the State legislatures.

Numerous recommendations came from the several studies that made up the report. One of these was that there should be line authority from the Director of Education Programs to the Director of JOM to the Director of Education in each Area office. Another was that the Bureau should train its JOM staff in educational finance, and should pay that staff only from JOM budgets.

The report recommended as a national policy the discontinuation of JOM basic support.

One legislative recommendation was that appropriations for PL 874 and PL 93-638 be increased, since they are logical sources of operating and capital outlay revenues for districts with large Indian enrollments. Otherwise, the report found little need for legislative remedy; there is plenty of legislative authority already.

IX. CONCLUSIONS

1. The Bureau of Indian Affairs fails to assess the resources of a local education agency (LEA) before making funding decisions.
2. The BIA does not monitor its contracts, once awarded, at either the contractor or LEA level.
3. In the competition among BIA Area Offices for Johnson O'Malley funds, allocations are determined by clout, by hustle, or by other factors that are not necessarily compatible with equity, or with educational needs.
4. Lack of accountability is the biggest single obstacle to improving the management of Johnson O'Malley funding and programs at all levels--national, area, contractor, LEA.
5. Recognized principles of sound management, including workable policy, internal control over operations, and program evaluation or audit, are all absent from the management of JOM funding.
6. Legislation other than the Johnson O'Malley Act has important effects on Bureau policy guiding the administration of Johnson O'Malley funding.
7. No State could substantiate a need for Johnson O'Malley funding for basic support.

   The role of funding a school to keep it alive--for example, to keep a school open in an Indian community in the face of pressures for consolidation--is a role distinct from providing JOM funds.
8. The use of Johnson O'Malley money for basic support of public schools is enclosed within the issue of equalization of funding for public schools, which is a State matter.

X. RECOMMENDATIONS

1. The Bureau of Indian Affairs area office should not release any money under a JOM contract until it has reviewed the school district budget for the year for which the contract is intended.

   For a district claiming poverty as a justification for receiving JOM basic support, the Bureau should verify (a) that the district's poverty comes not merely from having many Indian students, but from many Indian students who live on tax exempt land (b) that the district is poor relative to other districts its size, and (c) that the State financing plan does not discriminate in any way against Indian districts or against heavily Federally supported districts.

2. An evaluation of programs should precede Johnson O'Malley funding of any supplementary programs. To avoid program supplanting it is necessary to study a school district's basic program and any existing non-JOM programs prior to funding new, supplementary, JOM programs.

3. The BIA staff assigned to JOM tasks should work only on JOM, and should be paid from a single, JOM budget.

4. JOM money should be made predictable; the level of funding an LEA can expect should be stabilized early in the LEA's budgeting process.

5. JOM Contractors should be required to justify and defend initial JOM budgets and actual expenditures.

6. BIA staff should receive training that will qualify them to assess district revenues, evaluate programs, understand school finance in general and particular State finance plans, and monitor contracts.

7. There should be direct line authority from the Director of Education Programs for the BIA to the Director of Johnson O'Malley Programs and from there to the Director of Johnson O'Malley Programs in each Area Office.

8. Johnson O'Malley appropriations should be used strictly for JOM. Other programs--for example, the Bordertown program--and the administrative costs of the central office should be funded from separate appropriations under the authority of the Snyder Act.

9. The Bureau of Indian Affairs should discontinue providing any Johnson O'Malley funds for basic support.

10. The Bureau should examine the need for phase-out funding for districts now receiving JOM basic support. Where such phase out funding seems advisable, it should come form some source other than Johnson O'Malley and phase out should be complete within two years.

11. The Bureau should examine the role of keeping public schools open with Federal funds; if the Bureau decides to continue playing such a role, the funds should come from a source other than JOM.

12. The Bureau, and for that matter, HEW should work to get increased monies for PL 874, and for the Indian Self-Determination and Educational Assistance Act (PL 93-638), the former as the most appropriate Federal source of basic support for public schools, the latter as a source of construction funds replacing PL 815.

13. The Bureau should remove the set of contingencies now present in national policy whereby it pays a school district better to seek Johnson O'Malley basic support than to use other funds as basic support and seek JOM supplementary support.

14. The Bureau should provide technical assistance to State Departments of Education and to LEA's and tribes directed toward maximizing PL 874 funding for Indian districts. For example, the Bureau could sponsor workshops in applying the five-district comparison method of computing PL 874 allotments.

XI. APPENDICES

APPENDIX

Excerpts from the Work Requirements for this Report

Conduct comprehensive review of the legislative history and intent of Title II of PL 93-638 relative to Indian education, as well as similar consideration of:

A. Act of April 16, 1934, as amended (Johnson-O'Malley);

B. Title I of the Act of September 30, 1950, as amended (PL 874 - Impact Aid);

C. Act of April 11, 1965, as amended (ESEA);

D. Title IV of the Act of June 23, 1972, as amended (PL 93-318 - Indian Education Act);

E. Act of September 23, 1950, as amended (PL 815 - School Construction).

Provide descriptive, quantitative, and fiscal data, including fund allocation formulae regarding each program described in Section 203 of PL 93-638 with relationship to appropriation amounts for the fiscal years involved; by States, school districts, local schools, tribal groups affected; and, number of Indian children served by the programs.

A. Data shall reflect and identify elements bearing on actual program and fiscal needs being met by these Federal programs.

B. Federal, State, and local government policies shall be reviewed and reported relative to the intent of the Acts; management and administration of the programs; reporting systems involved; the extent of complementary or duplicative efforts involved in funding eligible Indian students; community and parental reactions to these programs; and, the identification and possible solutions to problems or obstacles impeding the effective, efficient, and economical management and administration of funds and services to Indian students in public schools.

The legislative intent of this study as mandated by Section 203 of PL 93-638 shall be scrupulously observed for the Federal programs involved and should provide in-depth information, data, and materials addressing the following issues:

A. Identify in all States receiving JOM funds a representative samples of public school districts on or near reservations that have financial problems in meeting basis operational expenses.
   (1) Assess what State, local and Federal funds go into the districts, the amounts, and for what purposes and programs.
   (2) Assess the impact of these funds and programs on Indian students.
   (3) Assess the unmet financial and program needs.

B. Determine if there is program duplication. If not, why not? If there is, determine the prime factors that are causitive and how can the duplication be remedied.

C. Identify if there is sufficient funds in each program to meet the basic and supplemental needs of Indian children.
   (1) Explore Federal, SEA, and LEA assistance programs--their management, administration and budgets.
   (2) Identify and recommend what needs to be remedied to insure sufficient funds for covering basic expenses.
      (i) Changes in legislation? What Acts? At what governmental levels?
      (ii) Changes in roles and management? At what governmental levels?

Contractor shall design specific program(s) encompassing administration, management and funding protocols to meet the needs of Indian children in public schools, including early childhood, elementary and secondary levels of education. This program(s) shall include, but not be limited to, the following aspects:

A. Formula(s) for determining student allocations to assure funding equity related to student need in public schools.

B. Program cost estimates for this year and the next four succeeding fiscal years as a guide to the Congress and the related Federal agencies.

C. The kinds and types of programs, staff, materials, and facilities required.

The issue of the property tax as the primary source of public school funds on or near reservations shall be studied and reported on, including:

A. Existing inequities.

B. Implications for tribal economic development and self-determination.

C. Suggested remedies.

D. Specific legislative recommendations to overcome or ameliorate current inequities, shortfalls, or irregularities in the present Federal programs relating to Indian students. Critical issues include:

   (1) What roles shall these programs play?

   (2) To what degree and scope should each Federal assistance program contribute to Indian education?

   (3) Can equitable methods be employed to alleviate prior funding difficulties for both basic and supplemental program needs?

APPENDIX B .

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APPENDIX C

Comments

Concerns expressed at Summary Report Session to Indian Organizations on September 8, 1975.

Walter Moffet, Chairman--Affiliated Tribes, Northwest Indians

1. He expressed a concern on the distribution formula.
2. He wants a definition on position of an Indian.
3. He wants a definition of an Indian
4. He wants to know how a tribe becomes Federally recognized.

Gilbert Lucero, New Mexico Indian Education Board of Regents

Recommends emphasis based on IEC. If school board is Indian controlled there should still be an Indian Education Committee in that school district.

Gordon Jackson, Alaskan Federation of Natives, Incorporated

Wants to know the real definition of direct services in regulations 678. He thinks money should go directly to the districts and not to the State. He says there are times when they cannot get funding because they do not have a desegregation plan.

Helen Scheirbeck, Sub-contractor--NIEA

Input from tribal leaders as well as IEC should be solicited. JOM should be identified as a supplemental program and moved away from basic support a clear definition should be established on who will sign off on a contract. We should also take a look at how State IEC directors interprets their JOM contracts and regulations, and how they implement this in school programs.

Excerpts From Fact Sheet on Indian Education Prepared by the Red Lake Education Task Force

Focus

The Red Lake Education Task Force presents the following as areas of vital concern in our continuing efforts of self-determination. Despite the resounding rhetoric on Indian self-determination abounding today, major decisions regarding Indian Education continue to be made without consulting Federally-recognized Indian Tribes.

Issue 1: PL 93-638

PL 93-638 known as the "Indian Self-Determination and Education Assistance Act", is being studied by Indian organizations and individuals who are not included in the Indian eligibility definition as defined in CFR 25. A meeting was called by a Washington-based Organization called the Americans for Indian Opportunity. Invitations were addressed to Washington--based lobbying groups and organizations and not tribal councils. The Red Lake Education Task Force was able to attend the meeting only after extensive research and not by invitation. Yet the "Red Regiment" directed by NARF, (Native American Rights Fund) is gaining the ear of BIA officials and recommending regulation changes in the name of all Indians.

Issue 2: The Johnson O'Malley Study

Current studies being carried out on the use of Johnson O'Malley funds at the local level are being used as vehicles to support individual assumptions about the allocation of funds. Red Lake has been surveyed and visited by representatives of two of the five study groups; namely NIEA and

and ATA, have been ill-prepared and dangerously uniformed of the impact their studies can have on the Red Lake Education Program. The researcher who is assisting in determining the legitimacy of Johnson O'Malley being used for Basic Support was not even aware that Red Lake has a unique status as a closed reservation or that our school system is 96% Indian. She would not have found out save for an anadvertent encounter with our task force. We seriously question the validity of such "research" in light of the profound impact their recommendations have. We contend that the Red Lake Tribal Council can best assess our educational and financial needs and determine our goals and objectives.

Issue 4: Inflated Indian Population

The current philosophical phenomena used by several organizations in establishing the criteria for the definition of Indian is typically portrayed by the National Advisory Council on Indian Education which is in direct conflict with the Federally recognized tribes.

Specifically, we were told outside the meeting by one member, that the theory is to generate the greatest possible political power force through establishing criteria that would increase the population base of the American Indian to several million, while yet only a few supposedly would receive the Federal dollars allocated for "Indians". It is our strongest feeling that the whole "issue" could be cleared and Federal dollars spent most prudently if the Congress of the USA would adopt the US Code 25 statement on the definition of an "Indian" for all monies and programs established for the Indian pople. By so doing, the US government would be meeting their goals and obligations three-fold: First, by assuring the Indian people that they would receive their rightful share as by treaty rights; secondly, it would eliminate those who are fraudulently trying to destroy the real "Indian" by allowing non-Indians to become a multi-million population force for their own vested interests; thirdly, this would satisfy the tax payers knowing that there is criteria established for the identity of the Indian so that the tax dollars will be spent prudently for the purposes of laws adopted and not being dispersed to the "watered down Indian population of several millions of people that they would have to support who basically do not qualify".

APPENDIX D

NEW MEXICO INDIAN EDUCATION BOARD OF
243-7781

August 8, 1975

United States Senate
Committee on Interior Affairs
Senate Office Building
c/o Forrest Girard
Washington, D.C. 20510

Dear Mr. Girard:

COMMENT ON AUGUST 1, 1975 DRAFT REGULATIONS FOR P.L. 93-638

The New Mexico Indian Education Board of Regents has followed the implementation of new Johnson O'Malley regulations for the past few years; and has tried to provide advice and comment which would maintain a consistent commitment of the U.S. government to the reservation Indian students for whom the JOM monies have been traditionally appropriated.

While tribal leaders have been participating in the hearings conducted by the Bureau of Indian Affairs to implement the Public Law 93-638, to date the succeeding drafts of the regulations have not yet taken enough steps to limit the purpose of JOM as we, the New Mexico tribes, see it. For this reason we appeal directly to the Congress to provide this guidance to the administrators who will distribute JOM funds.

1. ELIGIBILITY (a) Section 403.12 permits students "recognized by the Secretary (of Interior) as being eligible for Bureau services" to receive Johnson O'Malley funds. The use of "eligible" if broadly viewed would extend to any student who has 1/4 or more degree Indian blood; unless additional funds are provided to cover these additional people, the result would be a drastic reduction in services currently available to reservation students enrolled in public schools. It is important that Congress somehow indicate its view of how the term "eligible" should be used by JOM administrators within the BIA: a sentence which states that eligibility shall be tied to residence on or near the student's reservation would do this.

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(b) the mixture of basic (or operational) support with supplemental program funds extends throughout the new regulations. This creates problems in two major ways that we can see:

(1) the current administrative interpretation of the formula designed to provide an "equitable" distribution of JOM funds seems to have some serious flaws: (i) public schools which receive operational support receive these funds "off the top" of the JOM national allocation; then, in addition, these areas also receive the per capital allocation for supplemental programs. Since the national allocation has been shrinking over the past years, this double counting seems unfair. Bureau of Indian Affairs people have told us that this practice would not continue next year. We hope you will make sure this is true. (ii) a second, and potentially more significant loophole concerns the "previously private schools" or other Indian controlled schools which appear to be eligible for operational support under the new regulations. Unlike public schools the average state per pupil expenditure provides no guidelines for what is needed for a "basic program". With no "minimum state standards" or other guidelines, the "basic" program is limited only by the imagination of the school board and administrators. Again, with a shrinking money allocation nationwide, the increase in students eligible for JOM funds under this category, plus potentially unlimited "needs" could seriously curtail the existing JOM supplemental programs. Perhaps separating the allocations and regulations for these schools would be most desirable. In any case some guidance needs to be given here to see that these newly eligible schools do not completely overwhelm the existing, and hopefully, ongoing programs. It is our understanding that these students receive in addition to the basic support, per capita allocations for supplemental programs. Our dispute with this pratice has been discussed above. (iii) peripheral dormitory students again are counted twice: once for full per pupil expenditure reimbursement to the school district for operational programs, and again for supplemental programs on a percapita basis. It is our understanding that only 8 of 19 peripheral dorms have received JOM funds in the past. The new regulations do not specifically limit or exclude these others. Another potentially expensive loophole. We have not been led to believe that the double counting for peripheral or previously private schools will be phased out next year as it will be for the public schools. Therefore, attention here is particularly important.

2. ROLE OF INDIAN EDUCATION COMMITTEES. Section 403.15 (b) specifically exempts school districts whose boards of education are composed of a majority of Indians from the requirement of establishing an Indian education committee. Of the 12 school districts served by the New Mexico Indian Education Board of Regents, two have school boards with an Indian majority, and significant non-Indian student

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enrollments. In both these districts the tribes involved have come to express the importance of having an independent Indian education committee. The rationale which we find persuasive is that the school board must consider the needs of all students while the JOM monies are solely for the benefit of Indian students. Separation of responsibilities removes the conflict of interest problems which naturally affect the school boards in such a situation. We recommend that this newly inserted exception (it was not included in the July 17 draft discussed with national Indian organization in Albuquerque during the last week in July) be removed.

3. TRIBAL INVOLVEMENT IN ALLOCATION PROCESS. For over a year now (ever since the JOM regulations were first revised) the tribal contractors of JOM funds in New Mexico have sought to become involved in the allocation and regulation interpretation processes. Within the U.S. government, particularly the BIA national administration. It seems to us that this kind of involvement is a natural consequence of the philisophy of "maximum parental participation and control" Section 403.4. Any assistance from Congress in this matter could alleviate alot of the administrative disputes currently going on in the JOM area; a national forum for resolving disputes among areas could be established. Your help would be greatly appreciated in this area.

4. OTHER AREAS OF CONCERN. (a) pro-rata requirement. Section 403.32 requires non-Indian participation in JOM funded programs to be paid for from other sources of funds available to a school, if such participation is more than "de minimus." Two comments: first, to our knowledge and in our experience there are no such funds available to a public school which could legally be expended for non-Indians and not for Indians. Secondly, the flat requirement of "sole benefit" denies any options of choice to the local Indian education committee. For years we have suggested a "primary benefit" test for compliance, provided the local IEC wanted some non-indian participation in a JOM program component and the non-Indians would not either exclude Indian students or increase the program's cost. (b) the education plan requirements. Section 403.18 sets out 23 requirements for a full compliance plan. if there are any priority areas these should be indicated, since it could take significant time (several years) to do a full and thorough plan. In the meantime, programs could continue as the plan developed.

We would like to work with you and your staff to implement these suggestions to the fullest extent possible. Perhaps comments in the committee reports to the appropriations act or in the Congressional review of the P.L. 93-638 regulations would be the appropriate places.

ARTHUR GAHBOW, PRESIDENT
HARRY BONESS, VICE PRESIDENT
GEORGE V. GOODWIN, EXECUTIVE DIRECTOR
KENT P. TUPPER, LEGAL COUNSEL
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APPENDIX E

THE MINNESOTA CHIPPEWA TRIBE
335-2286 CASS LAKE, MINNESOTA 56633 P. O. BOX 217
SELF-DETERMINATION

Recommendations To
The National Indian Education Association, Contractor for
Report mandated by P.L. 93-638, Section 203, Title II.

Submitted by
The Minnesota Chippewa Tribe

Presented by:

Jerome Buckanaga
Treasurer, Minnesota Chippewa Tribe

Richard W. Tanner, Education Division
Minnesota Chippewa Tribe

Rosemary Christensen
Consultant

September 9, 1975

The Minnesota Chippewa Tribe sent three people to attend the meeting called by the National Indian Education Asssociation in Albuquerque, New Mexico on September 8,9, 1975. After listening to the reports of the subcontractors, Ms. Helen Scheirbeck, Myron Jones, Richard Wilson and Elizabeth Whiteman runs Him on the study the representatives from the Minnesota Chippewa Tribe met to formulate recommendations from the Tribe based on what was reported by the subcontractors. Assurances were made by Dr. Noah Allen, NIEA executive director, that recommendations would be accepted by tribal and organization groups and be appended to the study.

The Minnesota Chippewa Tribe, representing 40,000 enrolled Indians and governing six Minnesota Chippewa reservations, Mille Lacs, Leech Lake, White Earth, Grand Portage, Nett Lake and Fond du Lac, supports the following recommendations:

1. Section 101(Scheirbeck) on legislative intent of the federal programs covered by the '638 mandated study be disseminated to Tribes and Indian organizations within 60 days.

2. That eligibility requirements for federal programs studied under section 101 be consistent with the present Johnson O' Malley regulations.

3. In that the "silence of congress" as shown by section 101 analysis of the federal programs (as studied)has resulted in bureaucratic initiative in promulgating rules and regulations to the detriment of Indian participation with exception of Title Iv and Johnson O'Malley, the Minnesota Chippewa Tribe recommends Congress mandate Indian participation for the remaining federal programs studied under '638.

4. In that section 101 finds legislative intent of programs show clear Federal acceptance of responsibility for Indian education, therefore the Minnesota Chippewa Tribe recommends the study report take a positive stand on pro-ration as being consistent with federal intent and federal law, and further, the position taken by Dan Rosenfelt indicating the unique status

of Indians relative to the Civil Rights Act of 1964 be reviewed by the subcontractors as possible inclusion in study data. Rosenfelt's remarks can be read in Stanford Law Review, april 1973, (vol 25)

5. In that the lack of specific policy statements on Indian education by the silence of congress has resulted in confusion on state vs. federal responsibility, the Minnesota Chippewa Tribe recommends Congress clearly define state and federal responsibility and further, that Indian controlled schools be recognized by Congress as legitimate and qualified educational institutions.

6. As the findings of section 102(Whiteman Runs Him) indicate parent committees are misinformed and uniformed on regulations and rules of federal programs, the Minnesota Chippewa Tribe recommends negotiations(for contracts) be made with Indian Tribes when Tribes are the contracting agent; otherwise, the negotiations procedures should mandate parent committee involvement.

7. The negotiation procedures as presently practiced by the Bureau of Indian Affairs are in fact clarification sessions on rules and regulations therefore, the Minnesota Chippewa Tribe recommends negotiation procedures be redefined to reflect actual and real negotiations at the contractual level.

8. The portion of the contract component commonly referred to as the "boilerplate" be modified to represent current educational standards applicable to the contracting Indian Tribe.

9. Current Bureau practices allow for "penciled changes" in Johnson O'Malley required procedures for contractors resulting in program confusion and inconsistency, therefore the Minnesota Chippewa Tribe recommends manual changes including the so-called "pencil changes" be required to follow the Federal Register process now practiced by the government for new rules and regulations for federal programs.

10. The Minnesota Chippewa Tribe recommends contracts and contract negotiation be processed at the Washington level thereby saving millions of dollars now spent at the area level.

11. The Minnesota Chippewa Tribe recommends action be taken immediately to stop the $1Million(plus) administrative costs illegally expended by the Washington BIA office. Section 102 subcontractor is to be commended for finding and documenting this BIA illegal expenditure.

12. In that the State of Minnesota has several separate Tribal bodies within its boundaries therefore, Minnesota Chippewa Tribe recommends contractor plans be required in lieu of state plans, and further such contractor plans reflect documented needs with appropriate evaluation procedures required in the plan and with the necessary additional appropriations made for the needs assessment and evaluation.

13. The Minnesota Chippewa Tribe supports Section 103(Jones) statement regarding community schools, in that the Tribe unequivocally supports community schools regardless of cost, and further, recommends efforts be made to obtain the full support from State and Local educational agencies for community schools.

14. The Minnesota Chippewa Tribe recommends if basic support criteria remains as presently stated (in the new regulations) that is that school districts must show a 70% Indian student population to be eligible for basic support funds, a change in recommended in wording, from school "districts" to school attendance areas.

15. The Minnesota Chippewa Tribe recommends that BIA records be standardized with assistance and consultation from contracting Tribes and further the standard form thus devised reflect actual activities as carried out in the field.

16. The Minnesota Chippewa Tribe recommends administrative costs be redefined and stated as program costs, when the contractor is an Indian tribe. Justification for this position is available in the JOM study commissioned by the Tribe and conducted on the six reservations. The study results and report will be made available to the contractor for the national study, the National Indian Education Association.

17. The Minnesota Chippewa Tribe recommends a legislative charge be considered in Title IV , the Indian Education Act, P.L. 92-318, in that the Tribe recommends the Title IV funds available under Part A of the act be contracted to Tribes for the administration of, and dissemination to (of funds) the Local Educational agencies.

18. The Minnesota Chippewa Tribe recommends Title IV interpretation of rules and regulations be in writing and disseminated on a regular basis to Indian tribes and organizations. The oral interpretation presently carried out by Part A, Title IV staff causes confusion between tribal groups and LEA representatives.

19. Title IV rules and regulations ought to be revised to include "definition of teacher", further, parent committee eligibility requirements should be clearly stated regarding eligibility of white parents of Indian children, a clear definition of "foster parent" is needed and additionally the rules and regulations ought to limit teacher voting participation for parent committee members to a specific percentage point of not more than ten percent (10%) of the total voting constituency. .

20. Title IV rules and regulations should state "there shall be annual elections"(of parent committees); as the rules are presently stated regarding elections, it is not clear to Parent committees and LEAs that yearly elections must be held if the proposal cycle requirements are to be met, in that public hearings must be held each year after which the committee is to be elected.

21. The Minnesota Chippewa Tribe recommends the regulations for Title Iv be changed to show Indian Tribes' guidelines for tribal elections as the recommended way to elect Parent Committees and further, that Indian tribes be designated as the Offical election board for Title Iv eligible districts within their juristiction.

22. The authority of the Parent committee should be clearly defined regarding parent committee recommendations and basic guidelines as promulgated by parent committees on LEA personnel selections for title IV positions.

23. The Tribe recommends Title IV Washington Office be instructed by Congress to write and disseminate a "layman's" version of the rules and regulations for Part A and B and C of the Indian Education Act.

24. As HEW permits under its regulations, a written interpretation of the rules and regulations show a clear method of automatic carry-over provisions for Title IV fiscal year-end funds. If HEW regulations do not permit automatic carry-over provisions the Office of Indian Education should be directed to study HEW regulations to permit a change to allow such a procedure.

25. Indian preference interpretation by the Office of Indian Education as being appropriate or inappropriate for title Iv personnel be released through the Federal Register mechanism with the necessary supporting data.

26. The Office of Indian Education should be instructed by Congress to promulgate measures for the LEAs to provide documentation signed by Parent Committee members showing spending of Title IV funds are carried out as stated in the proposal or revised proposal.

27. The Minnesota Chippewa Tribe recommends Congress instruct the Office of Indian Education to show consistency within the Office of Indian Education regarding interpretations of the rules and regulations. For example, recent rules and regulations interpretation as provided by the present acting manager of Part A are from time to time inconsistent with previous interpretations as promulgated by the past manager of Part A. These inconsistencies cause anguish, confusion and hardship at the tribal, parent committee and LEA level.

28. The Tribe recommends the Office of Indian Education offer a clear written interpretation regarding precedence of the LEA or the parent committee on personnel recommendations for Title IV positions.

29. The Tribe recommends the Office of Indian Education be instructed to adhere to Part B, Title IV intent of preference to tribes based on need rather than the actual practice of looking at other federal funding dollars available (to the Tribes) and basing grant allocations on the federal funding dollar information.

30. For all appropriate sections(A,B, and C,), the Office of Indian Education be directed to disseminate proposal approvals and disapprovals procedures to Indian tribes and organizations and through the Federal Register in order to document proper procedures are followed at the Washington office for proposal cycles. Appeal procedures ought to be clearly defined. If no appeal procedures exist the Minnesota Chippewa Tribe recommends appeal procedures be implemented.

31. The Tribe recommends that the SEA,LEA level and where appropriate other government levels be instructed to show the actual benefits each organization receives from the Indian children body count. Comparison ought to be made with these actual dollars brought in by Indian children to the tax dollar brought by non-Indian children. The dollars so allocated ought to show total budget breakdown figures.